

Note: This mark-up version of the proposed regulations is intended to assist in your use and understanding of the proposed changes. The current and proposed regulations are contained entirely within this document.

In this version,

1. New proposed regulation sections are preceded with the phrase “6 AAC 50 is amended by adding a new section to read:” and are presented in normal font.
2. Sections and text that have minor proposed changes may be indicated with the phrase “6 AAC 50.X is amended to read:” and are presented with new proposed text underlined, and deleted text [BRACKETED AND IN CAPITALS].
3. Current sections that are proposed for repeal are indicated with the preceding phrase “6 AAC 50.X is repealed:” with the repealed text font *minimized and italicized*.

TITLE 6. GOVERNOR'S OFFICE DIVISION OF GOVERNMENTAL COORDINATION

CHAPTER 50. ALASKA [PROCESS FOR CONSISTENCY DETERMINATION, REVIEW, AND PETITION FOR] COASTAL MANAGEMENT PROGRAM (ACMP) IMPLEMENTATION

Article

1. Program Administration (6 AAC 50.005 – 6 AAC 50.055) [CONSISTENCY DETERMINATION AND REVIEW (6 AAC 50.010 – 6 AAC 50.190)]
2. State Consistency Review Process (6 AAC 50.200 – 6 AAC 50.280) [PETITIONS TO THE ALASKA COASTAL POLICY COUNCIL (6 AAC 50.310 – 6 AAC 50.380)]
3. Consistency Review Process for Federal Activities (6 AAC 50.305 – 6 AAC 50.395)
4. Consistency Review Process for Federally Regulated Activities (6 AAC 50.405 – 6 AAC 50.495)
5. Public Participation (6 AAC 50.500 – 6 AAC 50.520)
6. Elevation and Petition (6 AAC 50.600 – 6 AAC ~~50.680~~¹ 50.630²)
7. General and Nationwide Permits, Categorically Consistent Determinations, General Consistency Determinations, and General Consistency Concurrences (6 AAC 50.700 – 6 AAC 50.790)
8. Project Modifications and Renewals of Authorizations (6 AAC 50.800 – 6 AAC 50.830)
9. General Provisions (6 AAC 50.910 [6 AAC 50.925] – 6 AAC 50.990)

ARTICLE 1. PROGRAM ADMINISTRATION [CONSISTENCY DETERMINATION AND REVIEW]

005. Applicability of the ACMP Consistency Review Process
010. Repealed [PURPOSE OF REGULATIONS]
015. (Expired)
020. Repealed [FEDERAL CONSISTENCY DETERMINATIONS]
025. Scope of Project Subject to Consistency Review
030. Repealed [STATE PERMIT CONSISTENCY DETERMINATION]
035. Division of Governmental Coordination (DGC) Responsibility
040. Repealed [PREAPPLICATION ASSISTANCE]

045. Resource Agency Authority
050. Repealed [EXPEDITED REVIEW BY CATEGORICAL APPROVAL]
055. Coastal Resource District Responsibility
060. Repealed [SCOPE OF PROJECT TO BE REVIEWED]
070. Repealed [CONSISTENCY REVIEW PROCESS]
075. Repealed [TIMING AND PROCESS OF ELEVATION]
076. Repealed [TIMING OF PETITION REVIEW]
080. Repealed [CONFIDENTIAL INFORMATION AND FEES]
090. Repealed [EMERGENCY EXPEDITED REVIEW]
100. Repealed [PUBLIC PARTICIPATION]
110. Repealed [REVIEW PERIOD DEADLINES, EXTENSIONS, SUSPENSIONS, AND MODIFICATIONS]
120. Repealed [CONCLUSIVE CONSISTENCY DETERMINATIONS]
130. Repealed [ISSUANCE OF PROJECT PERMITS]
190. (Repealed)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.005. APPLICABILITY OF THE ACMP CONSISTENCY REVIEW PROCESS. (a) A project ~~that may affect any coastal use or resource~~³ is subject to the consistency review process described in this chapter when

- (1)⁴ any activity that is part of the project
(1)⁵ ~~A~~⁶ requires a state agency authorization identified under 6 AAC 50.750;
(2)⁷ ~~B~~⁸ is a federal activity;
(3)⁹ ~~C~~¹⁰ requires a federal authorization identified under 6 AAC 50.405; or
(4)¹¹ ~~D~~¹² is described in¹³ an Outer Continental Shelf (OCS) exploration or development and production plan¹⁴; and¹⁵

- (b) ~~In accordance with 16 U.S.C. 1453~~¹⁶ 2) the activity¹⁷
(1)¹⁸ ~~, excluded from~~¹⁸ A) is located within¹⁹ the coastal zone ~~are~~²⁰ , including federal²¹
lands ~~the use which is by law subject solely to~~²² within²³ the ~~discretion~~²⁴ boundaries²⁵ of ~~or~~²⁶
~~which is held in trust by~~²⁶ the ~~Federal Government, its officers~~²⁷ coastal zone²⁸
(B) is located inland of the coastal zone and will likely have a direct and significant
impact on a coastal use or resource within the coastal zone²⁹ ~~or agents~~³⁰
(C) is located on federal lands seaward of the coastal zone and will likely have a
reasonably foreseeable effect on any coastal use or resource of the coastal zone³¹

(e)³² ~~b~~³³ Only one consistency review process applies to a project. The consistency review process described in

(1) Article 2 (6 AAC 50.200-.280) applies when a project requires only an authorization from one or more state agencies;

(2) Article 3 (6 AAC 50.305-.395) applies when a project is a federal activity that may also require a state agency authorization; and

(3) Article 4 (6 AAC 50.405-.495) applies when a project requires a federal authorization or is an OCS exploration or development and production plan that may also require a state agency authorization.

(d)³⁴ ~~c~~³⁵ The consistency response under 6 AAC 50.305-.395 and 6 AAC 50.405-.495 is the only consistency determination required for a project that is a federal activity or federally regulated activity that also requires a state agency authorization. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.010 is repealed:

6 AAC 50.010. PURPOSE OF REGULATIONS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____) *[The regulations in this chapter are intended to implement, interpret, and make specific*

(1) the responsibility of the office of management and budget (OMB) to implement the Alaska Coastal Management Program (ACMP) by rendering on behalf of the state

(A) all responses concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. \p1456, (CZMA), and

(B) all conclusive consistency determinations for any project requiring two or more state agency or federal permits as required by AS 44.19.145(a)(11); and

(2) the responsibility of resource agencies to implement the ACMP by making conclusive consistency determinations for projects requiring the permit of a single state agency and no federal permit, and to expedite their permit review procedures, to the extent permitted by law, by coordinating their own procedures with the consistency review of a project. (Eff. 3/11/84, Register 89)]

6 AAC 50.015. TRANSITIONAL PROVISIONS. (In effect 5/1/90-8/9/90, be em adop., Register 114)

6 AAC 50.020 is repealed:

6 AAC 50.020. FEDERAL CONSISTENCY DETERMINATIONS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____) *[The division of governmental coordination (DGC) of the office of management and budget will coordinate a consistency review and render a response concurring in or objecting to a federal consistency certification or determination which is required or authorized by sec. 307 of the CZMA. DGC will coordinate the review in the manner provided in this chapter and will render a response in the time and manner prescribed in the CZMA or in the regulations implementing that Act. (Eff. 3/11/84, Register 89)]*

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.025. SCOPE OF PROJECT SUBJECT TO CONSISTENCY REVIEW. (a) The coordinating agency, in consultation with the applicant and any resource agency that requires an authorization, shall determine the scope of the project subject to a consistency review.

(b) Except as provided under AS 46.40.094 and 6 AAC 50.700, the scope of the project subject to a³⁶ consistency review must include

(1) each activity that requires a state agency authorization identified under 6 AAC 50.750;

(2) each activity that requires a federal agency authorization identified under 6 AAC 50.405; and

(3) a federal activity and its associated facilities.

(c) Except as provided under AS 46.40.094 and 6 AAC 50.700, the coordinating agency may include activities associated with a project in the scope of the project subject to a consistency review that³⁷

(1) occur in close proximate time and location to the activities subject to review under (b) of this section.³⁸

(2) meet the requirements of 6 AAC 50.005(a)(2); and³⁹

(3) are the express subject of an enforceable policy contained in a potentially affected coastal resource district's coastal management plan.⁴⁰

(d) Nothing in this section is intended to limit the evaluation of the effects caused by the activities included in the scope of the project subject to a consistency review, including cumulative effects, when such effects are the subject of an enforceable policy of the ACMP.⁴¹

(Eff. ___/___/200__, Register ___)

Authority: AS 44.19.160

AS 46.40.020

6 AAC 50.030 is repealed:

6 AAC 50.030. STATE PERMIT CONSISTENCY DETERMINATIONS. Repealed.

(Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; repealed ___/___/200__, Register ___) [(a) DGC will coordinate the review and render a determination for a project which requires the permits of two or more state agencies or a federal permit, in the manner provided in this chapter.

(b) A resource agency shall coordinate the consistency review and render a conclusive consistency determination for a project which requires only the permits of a single state agency and no federal permit. The agency shall coordinate the review and render its determination in the manner provided in this chapter.

(c) DGC will participate in a single-agency consistency review in the same manner as the other resource agencies participate. DGC will also, on request of the coordinating agency, act as a facilitator to attempt to resolve any disputed issues. If the project includes a disposal of interest in state land, DGC will either concur in the determination or require modifications necessary for its concurrence.

(d) DGC will, in its discretion, at any time, with reasonable notice, review the consistency review procedures, files, or decisions of a coordinating agency. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/9/90, Register 114)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.035. DIVISION OF GOVERNMENTAL COORDINATION (DGC)

RESPONSIBILITY. (a) The DGC is the designated state agency under section 306(d)(6) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1455 (CZMA), as amended. As the designated state agency, DGC is responsible for

(1) commenting on and concurring with or objecting to federal consistency determinations and negative determinations for federal activities and consistency certifications for federal authorizations and Outer Continental Shelf (OCS) plans; and

(2) ~~securing~~⁴² requesting⁴³ and coordinating ~~necessary~~⁴⁴ review and comment from

(A) resource agencies;

(B) coastal resource districts; and

(C) the public.

(b) DGC is the only state agency designated to

(1) comment on, concur with, or object to a federal consistency determination or negative determination for a federal activity;

(2) comment on, concur with, or object to an applicant's⁴⁵ consistency certification for a federal authorization or OCS plan;

(3) coordinate the consistency review and issue a consistency determination for a project that requires an authorization from two or more resource agencies

(4) coordinate the consistency review and issue a consistency determination for a project that requires an authorization from a state agency other than a resource agency; or

(5) determine whether a district is an affected coastal resource district.

(c) In executing its responsibilities under this section, DGC is considered the coordinating agency for purposes of this chapter.

(d) DGC shall develop, maintain, and update a coastal project questionnaire (CPQ). The CPQ shall solicit information regarding the project's description, site information, consistency with the enforceable policies of the⁴⁶ ACMP, and necessary authorizations.

(e) DGC will, at the request of a resource agency coordinating a single agency review under 6 AAC 50.045(c), act as a facilitator to attempt to resolve conflicts among the resource agencies, an affected coastal resource district or an applicant regarding a single agency consistency determination. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.040
AS 44.19.160 AS 44.19.162

6 AAC 50.040 is repealed:

6 AAC 50.040. PREAPPLICATION ASSISTANCE. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____) *[DGC will, on request, assist a potential applicant for a state permit for a project by providing and explaining the coastal project questionnaire and the consistency review process as described in 6 AAC 50.070, identifying persons to contact in other state or federal agencies, determining the scope of activities which comprise the project, and providing any other assistance or information at its disposal to facilitate review and approval of the applicant's proposed project. A resource agency shall, on request, provide similar assistance and shall also provide application forms for its own permits. DGC and all resource agencies will attempt to regularly inform each coastal resource district of proposed projects which may have significant and direct impacts on that district. (Eff. 3/11/84, Register 89)]*

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.045. STATE AGENCY AUTHORITY. (a) Nothing in this chapter displaces or diminishes the authority of any state agency with respect to coastal uses and resources under that agency's own statutory authorities.

(b) A state agency activity that may have a reasonably foreseeable direct or indirect effect on ⁴⁷~~any~~ ⁴⁸a coastal use or resource shall be conducted in a manner consistent with the enforceable policies of the ACMP.

(c) A resource agency shall coordinate the consistency review and issue the consistency determination for a project that requires an authorization from only that agency and no federal authorization.

(d) In executing its responsibilities under (c) of this section, the resource agency is considered the coordinating agency for purposes of this chapter. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040

6 AAC 50 is repealed:

6 AAC 50.050. EXPEDITED REVIEW BY CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____) *[(a) The consistency review of a project will be expedited as provided in (b) or (c) of this section if the project meets the requirements of one of those subsections.*

(b) A project which requires one or more state or federal permits, each of which appears on the list published under (e) of this section listing permits which have been categorically approved by DGC as being consistent with the ACMP, is considered to have been conclusively determined by DGC to be consistent with the ACMP. A permit will be categorically approved if DGC determines that the activity authorized by the permit will have no significant impact in the coastal zone.

(c) A project which requires one or more state or federal permits not categorically approved as provided in (b) of this section will be considered consistent without further review, if it meets the requirements of a general concurrence determination contained on the list published under (e) of this section. A "general concurrence determination" is a consistency determination for a type of project which includes only routine activities, and which can be effectively made consistent with the ACMP by imposing standard stipulations on the applicable permit. If a subsequent project of any applicant fits the description in a general concurrence determination, the project will be considered consistent with the ACMP if it complies with the stated standard stipulations.

(d) A project which requires one or more state or federal permits, and which is not within the categories described in (b) or (c) of this section, is subject to review as an individual project as provided in this chapter.

(e) DGC will publish a list of permits which have been categorically approved as being consistent with the ACMP, and a list of general concurrence determinations, and will identify on each list those permits or projects for which a coastal project questionnaire is not necessary. DGC will amend these lists as necessary on its own initiative, or on the request of a coastal resource district or a resource agency based on new information regarding the impacts of these activities, including cumulative impacts. Before publishing or amending these lists, DGC will distribute the proposed lists or amendments for comment in the manner provided in 6 AAC 50.070 for a project consistency review. (Eff. 3/11/84, Register 89)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.055. COASTAL RESOURCE DISTRICT RESPONSIBILITY. (a) A coastal resource district may participate in a consistency review under this chapter by submitting comments to the coordinating agency regarding consistency of the proposed project with the enforceable policies of the ACMP.

(b) A coastal resource district may participate in a consistency review as an affected coastal resource district if the

(1)⁴⁹ project is proposed to be located within the coastal resource district boundaries;⁵⁰ or ~~they demonstrate~~⁵¹

(2) the district demonstrates⁵² that the project located outside their coastal resource district boundaries⁵³ may have a direct and significant impact on a coastal use or resource within the coastal zone of⁵⁴ their coastal resource district boundaries.

(c) A coastal resource district whose program is incorporated into the ACMP is considered to have expertise in the interpretation of its program.⁵⁵ ~~(d) An alternative measure identified in a final consistency determination as necessary for compliance with the district program and issued under 6 AAC 50.265 shall be included in a local authorization issued by a coastal resource district exercising Title 29 authority~~⁵⁶. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.090

6 AAC 50.060 is repealed:

6 AAC 50.060. SCOPE OF PROJECT TO BE REVIEWED. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; repealed ____/____/200__, Register ____) [The scope of activities which are to be reviewed for consistency with the ACMP as part of a project will be determined based on statements of the applicant, the information provided in the coastal project questionnaire, and any additional information which DGC or a resource agency finds necessary to request. If there is disagreement among the agencies, DGC will make the final decision. If DGC determines that a project under review by a resource agency is one requiring a federal permit, or the permits of two or more state agencies, DGC will immediately notify the applicant and the resource agency that the consistency review will be coordinated by DGC, and will commence as provided in 6 AAC 50.070 when DGC has received completed applications for all necessary permits and a completed coastal-project questionnaire. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/9/90, Register 114)]

6 AAC 50.070 is repealed:

6 AAC 50.070. CONSISTENCY REVIEW PROCESS. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/29/90, Register 114; am 5/20/93, Register 126; am 7/1/99, Register 150; repealed ____/____/200__, Register ____) [(a) Except as provided in 6 AAC 50.050(e) or in (b) of this section, DGC on request, or a resource agency which receives an application for a permit for a coastal project, shall give the applicant a project questionnaire provided by DGC. Based on the information provided by the applicant in response to the questionnaire, the agency shall identify all state resource agencies which the applicant must contact regarding the project before submitting an application for a permit.

(b) A project questionnaire is not required for placer mining activity which is authorized by an annual application known as the "tri-agency placer mining application." These applications must be submitted to the Department of Natural Resources (DNR). DNR will distribute these applications to initiate the consistency review of the projects as provided in this chapter.

(c) For a project requiring a federal permit or the permits of two or more state agencies, the applicant shall submit a packet including all necessary state permit applications, copies of all necessary federal permit applications, and the project questionnaire to DGC, except that confidential information or fees must be handled as provided in 6 AAC 50.080. The coordinating agency may require the applicant to provide additional copies of maps or other documents which may not be conveniently duplicated.

(d) For a project requiring only the permits of a single state agency, the applicant shall submit a packet including all necessary applications and the project questionnaire to the agency.

(e) Immediately upon receipt of the packet described in (c) or (d) of this section, the coordinating agency shall review the information provided by the applicant for sufficiency for public review. A coordinating agency's consideration that a packet is sufficient for public review does not preclude a state agency from requiring an applicant to provide additional information or permit applications as necessary for the consistency review or that agency's exercise of its statutory authority. For a project that includes a disposal of interest in state land, the consistency review begins at a date that DGC and DNR agree will most effectively allow for both the consistency review and DNR's statutory responsibilities. If the coordinating agency considers that the packet is sufficient to start public review, and the project does not include a disposal of interest in state land, the coordinating agency shall

(1) identify Day 1 of the consistency review period; Day 1 is the date by which all required public notices have been published;

(2) inform the applicant of the date set under (1) of this subsection;

(3) establish a review schedule setting a deadline for the coordinating agency's receipt of comments at
(A) Day 17 in a 30-day review period, Day 34 in a 50-day review period, or a later date if the review period is extended or modified as provided under 6 AAC 50.110; or

(B) a date set as necessary to complete the consistency review process by a deadline established under 16 U.S.C. 1456(c) or federal regulations adopted under the authority of that statute;

(4) distribute to each review participant before Day 3 a copy of the packet and a review schedule as established under (3) of this subsection; and

(5) mail the copies described in (4) of this subsection to a person interested in the project, or make them available for public inspection and copying at a public place

(A) within a district that the coordinating agency considers to be an affected coastal resource district; the place shall be selected by the coordinating agency after consultation with that district; or

(B) in an area that the project might affect outside a district.

(f) A joint public notice of a consistency review may be issued with other state or federal agencies, if that notice complies with 6 AAC 50.100(b). If a public notice is not issued that would comply with 6 AAC 50.100(b), the coordinating agency shall issue a supplemental public notice that complies with 6 AAC 50.100(b).

(g) The coordinating agency, on its own initiative or at the request of a review participant, may request from the applicant on or before Day 25, or Day 15 of a 30-day review period, additional information relevant to the proposed project, which is necessary for its consistency review or its own statutory responsibilities.

(h) To be considered, comments must comply with 6 AAC 50.100(a). The coordinating agency shall send or ensure that each resource agency receives a copy of the comments and, if the coordinating agency holds a public hearing under 6 AAC 50.100(d), the summary of testimony prepared under 6 AAC 50.100(g). Upon request, the coordinating agency shall send a copy of the comments to other persons interested in the project. If a comment from a review participant recommends a stipulation for a proposed consistency determination, that participant shall provide a brief written justification for that stipulation. The justification must be based on the enforceable policy of the affected coastal resource district's approved program or the standards set out in 6 AAC 80.040 - 6 AAC 80.150. For a comment timely submitted under (e) of this section, the coordinating agency may subsequently consult with the state agency or district with expertise to consider that comment. The state agency or district consulted under this subsection shall acknowledge receipt of and review the comment, and respond to the coordinating agency.

(i) The coordinating agency shall encourage and facilitate consideration of comments received and discussion among the review participants. The coordinating agency shall determine whether there is a consensus among the resource agencies regarding a proposed consistency determination. The coordinating agency shall notify the review participants, the applicant, and other commenting parties, on or before Day 44, or Day 24 in a 30-day review period, of the proposed determination or the issues to be resolved.

(j) Repealed 7/1/99.

(k) Repealed 7/1/99.

(l) *If the coordinating agency does not receive a request for elevation under 6 AAC 50.075(a) or a timely notice of petition on a proposed consistency determination, the coordinating agency shall render a conclusive consistency determination that conforms to the proposed consistency determination. The determination shall be rendered and distributed by Day 50 of a 50-day review period or Day 30 of a 30-day review period. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/29/90, Register 114; am 5/20/93, Register 126; am 7/1/99, Register 150)]*

6 AAC 50.075 is repealed:

6 AAC 50.075. TIMING AND PROCESS OF ELEVATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)
[(a) If a resource agency, an affected coastal resource district with an approved program, or the applicant does not concur with the proposed consistency determination rendered under 6 AAC 50.070(i), it may request elevation of the review by submitting a written statement. The statement must describe the requestor's concerns and include a proposed alternative consistency determination that would meet those concerns. The requestor shall distribute this statement so that the review participants, the applicant, other commenting persons who timely submitted comments under 6 AAC 50.100(a), and DGC will receive a copy on or before Day 49 in a 50-day review period, Day 29 in a 30-day review period, or within five days after the requestor received notice of the proposed determination, whichever is later. Alternatively, the distribution may be made by transmitting the substance of the statement to the coordinating agency by telephone or other telecommunication device and sending written confirmation to others listed in this subsection by mail or courier on or before the applicable deadline.

(b) A coordinating agency that receives a request for elevation under (a) of this section shall extend the review schedule as provided under 6 AAC 50.110(b)(7). The coordinating agency may arrange a meeting of, and shall ensure mediation to attempt to resolve disputed issues and formulate a conclusive consistency determination by consensus among the following:

- (1) the applicant;*
- (2) the resource agencies;*
- (3) other state agencies that require a permit for the project;*
- (4) the affected coastal resource district.*

(c) The coordinating agency shall

(1) render a director-level proposed consistency determination with the participation of one director or the director's delegate from each resource agency;

(2) distribute the director-level proposed consistency determination to each person who timely filed a notice of petition on a proposed consistency determination and to each review participant, the applicant, and other commenting persons who timely submitted comments under 6 AAC 50.100(a).

(d) Within five days after distribution of the director-level proposed consistency determination, the coordinating agency shall render a conclusive consistency determination that conforms to the director-level proposed consistency determination, unless the coordinating agency receives

- (1) a timely notice of petition from the proposed director-level consistency determination;*
- (2) a timely notice of intent to continue pursuing a petition on a director-level proposed consistency determination; or*
- (3) a request from a resource agency, an affected coastal resource district, or the applicant for elevation of the director-level proposed consistency determination to the commissioners of the resource agencies.*

(e) If the coordinating agency receives a notice of petition or notice of intent to continue pursuing a petition on a proposed consistency determination, the coordinating agency may not act on a request for elevation to the commissioners of the resource agencies until the council has decided the petition.

(f) A coordinating agency that receives a request for elevation from a director-level proposed consistency determination, or from a revised proposed consistency determination prepared under 6 AAC 50.350(e)(1)(A), shall extend the review schedule as provided under 6 AAC 50.110(b)(7). The coordinating agency may arrange a meeting of, and shall ensure mediation, to attempt to resolve disputed issues and formulate a conclusive consistency determination by consensus among the following:

- (1) the applicant;*
- (2) the resource agencies;*
- (3) other state agencies that require a permit for the project;*
- (4) the affected coastal resource district.*

(g) *The coordinating agency shall*

(1) render a conclusive consistency determination, with the participation of each commissioner of the resource agencies or the commissioner's delegate, and that is consistent with any policy direction given by the commissioners of the resource agencies or the governor; and

(2) distribute the conclusive consistency determination to each review participant, each person who timely submitted comments under 6 AAC 50.100(a). (Eff. 7/1/99, Register 150)]

6 AAC 50.076 is repealed:

6 AAC 50.076. TIMING OF PETITION REVIEW. Repealed. (Eff. 7/1/99, Register 150; repealed ___/___/200__, Register ___) [*(a) A citizen of an affected coastal resource district may submit a notice of petition on a proposed consistency determination. If an elevation is not requested, the coordinating agency may proceed to act on a petition that meets the requirements of 6 AAC 50.330. If an elevation of the proposed consistency determination to the directors under 6 AAC 50.075(a) is made, the coordinating agency shall render the director-level proposed consistency determination before taking action on the petition.*

(b) Following distribution of a director-level proposed consistency determination, a citizen of an affected coastal resource district, an affected coastal resource district, the applicant, or a state agency may submit a notice of petition on a proposed consistency determination. A citizen of an affected coastal resource district that submitted a notice of petition under (a) of this section may submit a notice of intent to continue pursuing the petition on a proposed consistency determination. If an elevation of the director-level proposed consistency determination to the commissioners under 6 AAC 50.075(d)(3) is made, the coordinating agency shall and the council will act on any petition that meets the requirements of 6 AAC 50.330 before the coordinating agency acts on the elevation request.

(c) A conclusive consistency determination is not subject to review by petition by the council. (Eff. 7/1/99, Register 150)]

6 AAC 50.080 is repealed:

6 AAC 50.080. CONFIDENTIAL INFORMATION AND FEES. Repealed. (Eff. 3/11/84, Register 89; repealed ___/___/200__, Register ___) [*An application for a state permit requiring information which must by law be held in confidence, and any fee associated with a state permit, must be submitted by the applicant directly to the agency with responsibility for issuing the permit. The agency shall delete the confidential information from any copy of the application which is distributed for a consistency review under this chapter. (Eff. 3/11/84, Register 89)]*

6 AAC 50.090 is repealed:

6 AAC 50.090. EMERGENCY EXPEDITED REVIEW. Repealed. (Eff. 3/11/84, Register 89; repealed ___/___/200__, Register ___) [*If, due to an emergency as described in AS 26.23 or AS 46.04.080 or other applicable law, an applicant needs an expedited agency permit or consistency review, or if the head of the coordinating agency finds that an expedited review is necessary for the preservation of the public peace, health, safety, or general welfare, the head of the coordinating agency may modify the review process established in this chapter as necessary to meet the emergency. Any modifications in the review process made under this section must be made in writing by the head of the coordinating agency, based upon clear and convincing evidence of a need for the modification. (Eff. 3/11/84, Register 89)]*

6 AAC 50.100 is repealed:

6 AAC 50.100. PUBLIC PARTICIPATION. Repealed. (Eff. 3/11/84, Register 89; am 7/1/99, Register 150; repealed ___/___/200__, Register ___) [*(a) A person may comment on the consistency of a project by submitting written comments that are addressed directly to the coordinating agency on or before the comment deadline established under 6 AAC 50.070(e) or by presenting oral or written testimony to the coordinating agency at a public hearing that the coordinating agency schedules and holds under this section. If a person contends that the project is inconsistent with an enforceable policy of an affected coastal resource district's approved program or a standard set out in 6 AAC 80.040-6 AAC 80.150, the oral or written testimony must identify the enforceable policy or standard and explain how the project is inconsistent.*

(b) To provide sufficient notice of a consistency review, a public notice must at a minimum

(1) comply with the requirements of AS 46.40.096(c);

(2) solicit comments to be submitted to the coordinating agency regarding the project's consistency with the ACMP, and the approved program of an affected coastal resource district;

(3) identify the deadline by which the coordinating agency must receive comments; and

(4) identify each public place at which the copies of the packet and review schedule will be available for public inspection and copying, if the coordinating agency makes them available under 6 AAC 50.070(e)(5).

(c) At a minimum, public notice of a consistency review

(1) must be published

(A) in a newspaper of general circulation within a district that the coordinating agency considers to be an affected coastal resource district or an area that the state agency considers the project will affect; or

(B) by posting that notice in three public places within a district that the coordinating agency considers to be an affected coastal resource district or an area that the agency considers the project will affect;

(2) must be mailed to each person who has requested notice of the project from the coordinating agency;

(3) may be broadcast by radio or television to a district that the coordinating agency considers to be an affected coastal resource district or an area that the agency considers the project will affect; and

(4) may be mailed to a person whom the coordinating agency considers to be interested in the project.

(d) The coordinating agency shall schedule and hold a public hearing in an area that the coordinating agency considers a project will affect if the coordinating agency

(1) receives a request for a public hearing regarding the project no later than Day 34 of a 50-day review period, or Day 17 of a 30-day review period; and

(2) finds that the request is based on concerns regarding the project's consistency with the ACMP that would not otherwise be adequately addressed in the consistency review.

(e) Within seven days after receiving a request under (d) of this section, the coordinating agency shall decide whether to hold a public hearing.

(f) At least 15 days but no more than 30 days before the date of a public hearing scheduled under (d) of this section, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper of general circulation in the area to be affected by the project;

(2) by written notice to the governing body of an affected coastal resource district; and

(3) if the project is to be located in the unorganized borough, by radio or television broadcast to the area that the project might affect.

(g) If testimony at a public hearing held under this section presents a new issue or information that the review participants have not already considered, the coordinating agency shall summarize that testimony and distribute the summary to each review participant and the applicant within five days after the hearing. A review participant or the applicant may submit written comments in response to the summary so that the coordinating agency receives the comments within seven days after distribution of the summary.

(h) If a state agency or an affected coastal resource district holds a public hearing as part of its permit process under its authority or to develop its comments for submission under 6 AAC 50.070, the coordinating agency may consider testimony received at the hearing in its consistency review if

(1) the testimony meets the requirements of (a) of this section; and

(2) the coordinating agency holds the hearing jointly with the state agency or affected coastal resource district or receives the testimony from the state agency or the affected coastal resource district by the comment deadline established under 6 AAC 50.070(e). (Eff. 3/11/84, Register 89; am 7/1/99, Register 150)]

6 AAC 50.110 is repealed:

6 AAC 50.110. REVIEW PERIOD DEADLINES, EXTENSIONS, SUSPENSIONS, AND MODIFICATIONS. Repealed. (Eff. 3/11/84, Register 89; am 5/20/93, Register 126; am 7/1/99, Register 150; repealed ____/____/200__, Register ____) [(a) The coordinating agency shall complete a review by either Day 30 or Day 50 unless it extends, suspends, or modifies the applicable deadline as provided in (b) of this section. Each resource agency shall, after consultation with DGC, establish standards for determining whether a 30-day or 50-day decision deadline will apply. DGC will complete a review by Day 30 only if all required permits must by statute or regulation be issued within 30 days.

(b) Subject to the limits set out in this subsection, the coordinating agency may extend, suspend, or modify the review schedule established under 6 AAC 50.070(e) if the conclusive consistency determination will be made within a time limit imposed by applicable federal law or regulation. An extension, a suspension, or a modification and the reasons for it must be stated in writing and, except for an extension or a modification granted under (1), (7), or (10) of this subsection, must be for good cause showing the need for the extension, suspension, or modification. The

coordinating agency shall notify each review participant and the applicant of the terms of an extension, a suspension, or a modification. The limits on an extension, a suspension, or a modification are as follows:

(1) for a project located outside a municipality or within a coastal resource service area, the coordinating agency may extend the review schedule by up to 10 days;

(2) the coordinating agency may extend the review schedule by up to 10 days if a review participant requests time to perform a field review;

(3) if the project involves a disposal of interest in state land or resources and DGC is the coordinating agency, DGC will, on DNR's request, extend both the comment and decision deadlines for a period necessary to most efficiently coordinate the consistency review and the DNR disposal process;

(4) if a project is subject to 30 U.S.C. 1201-1328 (Surface Mining Control and Reclamation Act) or AS 27.21 (Alaska Surface Coal Mining Control and Reclamation Act), the coordinating agency shall extend the review schedule as necessary to conform to those provisions;

(5) the director of the coordinating agency may suspend or extend the review schedule as necessary for a public hearing that is held as part of the consistency review, a state agency's review of a necessary state permit application, an affected coastal resource district's review of a municipal permit required for the project under review, including the administrative review or appeal process for the municipal permit, or preparation of the district's comments for submission to the coordinating agency under 6 AAC 50.070;

(6) if the coordinating agency requests additional information from the project applicant under 6 AAC 50.070(g), the coordinating agency may extend or suspend the review schedule as necessary until the requesting review participant receives the information and considers it adequate; within seven days after receiving the information, the requesting review participant shall notify the coordinating agency whether the information is adequate to make the packet submitted under 6 AAC 50.070 complete;

(7) if the coordinating agency receives a request for elevation under 6 AAC 50.075(a) or 6 AAC 50.075(d)(3), the coordinating agency shall extend the review schedule by 15 days for each elevation;

(8) the coordinating agency may suspend or extend the review schedule at the request of the applicant;

(9) if the director of the coordinating agency determines that the project involves an unusually complex issue, the director may extend, suspend, or modify the review schedule;

(10) the coordinating agency and the state agency may agree to extend or modify the review schedule to conform to a procedure required under another state statute or regulation, if the length of time for receipt of comments described in 6 AAC 50.070(e)(3)(A)-(B) is met;

(11) if the coordinating agency receives a notice of petition under 6 AAC 50.320, the coordinating agency shall extend the review schedule by up to 50 days for the petitioner to file a petition on a proposed consistency determination and for the council to act on the petition under AS 46.40.096(e) and

(A) an additional five days if the council dismisses the petition; or

(B) an additional 15 days if the council remands the proposed consistency determination to the coordinating agency for the coordinating agency to render a revised proposed consistency determination, and an additional five days to provide an opportunity to request elevation of the revised proposed consistency determination under 6 AAC 50.075(d)(3).

(c) Repealed 7/1/99.

(d) When the coordinating agency restarts a review that was suspended under this section, the day that the review is restarted shall be assigned the day of the review schedule on which the review was suspended.

(e) In this section, "director of the coordinating agency" means

(1) the director of DGC, if DGC is the coordinating agency under AS 44.19.145(a)(11); or

(2) the director of a division within a state agency if

(A) that agency is designated the coordinating agency under AS 46.40.096(b); and

(B) that agency has assigned the tasks of the coordinating agency to that division. (Eff. 3/11/84, Register 89; am 5/20/93, Register 126; am 7/1/99, Register 150)]

6 AAC 50.120 is repealed:

6 AAC 50.120. CONCLUSIVE CONSISTENCY DETERMINATION. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; am 7/1/99, Register 150; repealed

____/____/200__, Register ____) [(a) In rendering a conclusive consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give due deference to the comments of resource agencies and affected coastal districts with approved programs. "Due deference" means that deference which is appropriate in the context of the commenter's expertise and area of responsibility, and all the evidence available to

support any factual assertions. A coastal resource district whose district program has been incorporated into the ACMP is considered to have expertise in the interpretation and application of its program. If the coordinating agency rejects a stipulation or recommendation requested by a commenting resource agency or affected coastal resource district with an approved program, within its respective area of expertise, the coordinating agency shall make a written finding stating the reasons for rejecting the stipulation.

(b) The coordinating agency shall render a written conclusive consistency determination before the decision deadline under 6 AAC 50.070 or 6 AAC 50.110. The agency shall distribute its determination to the applicants and to all resource agencies, all other agencies which commented on the project, and all affected coastal resource districts. The determination must describe the scope of the project which was reviewed. If the project is determined to be consistent with the ACMP, the determination must state any conditions or stipulations and must identify the state or federal permits in which each stipulation must be included to ensure that the project is consistent with the ACMP. If a resource agency is the coordinating agency, it may include the determination in its approval or denial of each permit required for the project.

(c) A conclusive consistency determination is a final administrative order and decision under the ACMP. (Eff. 3/11/84, Register 89; em am 5/1/90 - 8/29/90, Register 114; am 7/1/99, Register 150)]

6 AAC 50.130 is repealed:

6 AAC 50.130. ISSUANCE OF PROJECT PERMITS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____) *[A resource agency shall issue a permit which is necessary for a project, except a lease, within five days after it issues or receives the conclusive consistency determination for that project, unless the commissioner of that agency finds that additional review is necessary to fulfill statutory responsibilities. A resource agency shall issue a lease at the time and in the manner provided by applicable law, regulation, and agency procedure, but not before it issues or receives a conclusive consistency determination for the appropriate project. For a project which is deemed consistent, by either categorical approval of all necessary permits or a general concurrence determination, an agency shall issue a required permit as soon as possible in the time and manner prescribed by applicable statutes or regulations. A project permit must contain any applicable conditions or stipulations required by the conclusive consistency determination, and may not contain any additional condition or stipulation for the sole purpose of ensuring consistency. (Eff. 3/11/84, Register 89)]*

6 AAC 50.190. DEFINITIONS. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; am 5/20/93, Register 126; repealed 7/1/99, Register 150)

ARTICLE 2. STATE CONSISTENCY REVIEW PROCESS [PETITIONS TO THE ALASKA COASTAL POLICY COUNCIL]

- 200. Applicability**
- 210. Coastal Project Questionnaire**
- 216. Pre-review Assistance**
- 220. Applicant Consistency Review Packet**
- 225. Determination of Completeness and Notice to Applicant**
- 230. Determination of the Scope of the Project Subject to Consistency Review**
- 235. Timing of a Consistency Review**
- 240. Initiation of a Consistency Review**
- 245. Request for Additional Information**
- 250. Comment Deadlines**
- 255. Review Participant Comment**
- 260. ~~Development of a~~⁵⁷ Proposed Consistency Determination**
- 265. Final Consistency Determination**
- 270. Time for Issuance of a Final Consistency Determination**
- 275. Resource Agency ~~Project~~⁵⁸ Authorization**
- 280. Consistency Review Schedule Modification and Termination**

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.200. APPLICABILITY. (a) An activity that requires a state agency authorization identified under 6 AAC 50.750 and that meet the requirements of 6 AAC 50.005(a)(2)⁵⁹ must be conducted in a manner consistent with the enforceable policies of the ACMP.

(b) The consistency review process described in this article applies to a project under (a)⁶⁰ ~~when at least one activity that is part of~~⁶¹ the project requires ~~an authorization~~⁶² one or more state agency authorizations⁶³ identified under 6 AAC 50.750 ~~from one or more state agencies~~⁶⁴ and ~~when~~⁶⁵ the project is not subject to the consistency review process under 6 AAC 50.305-.395 or 6 AAC 50.405-.495. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.020 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.210. COASTAL PROJECT QUESTIONNAIRE. (a) Except as provided for in (c).⁶⁶ DGC on request, or a resource agency that receives an application for an activity that may require an authorization identified under 6 AAC 50.750, shall provide the applicant a CPQ. The applicant shall return the completed CPQ to DGC or the resource agency that provided the CPQ. Based on the information provided by the applicant in response to the CPQ, DGC or the resource agency shall, to the extent feasible, preliminarily identify the authorizations that are required for the project.

(b) If, during its review of the CPQ, a resource agency finds that a federal authorization or authorizations from more than one resource agency may be required, the agency shall

- (1) send the CPQ to DGC; and
- (2) refer the applicant to DGC.

(c) A CPQ is not required

(1) for placer mining activity that is authorized by an application known as an "Annual Placer Mining Application;" the application shall be submitted to the Department of Natural Resources (DNR);

(2) for an aquatic farm project proposed on state-owned tidelands and⁶⁷ applied for through an aquatic farm application packet; the application shall be submitted to the DNR; and

(3) when a categorically consistent determination developed under 6 AAC 50.710 or a general consistency determination developed under 6 AAC 50.730 specifically states a CPQ is not needed for the covered activity. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.216. PRE-REVIEW ASSISTANCE. (a) Prior to the start of a consistency review, a coordinating agency shall, on request, assist an applicant by explaining the⁶⁸ consistency review requirements.

(b) At the time an applicant requests pre-review assistance, the applicant shall, at a minimum, provide a brief description of the proposed project. To the extent feasible, the applicant shall provide the coordinating agency with a

- (1) completed CPQ;
- (2) map identifying the location of the project, adjacent facilities, and any designated environmentally sensitive areas; and

(3) description of any man-made structures⁶⁹ or natural features that ~~need~~⁷⁰ are proximally located⁷¹ to ~~be considered during the review of~~⁷² the project.

(c) The applicant may request that the coordinating agency provide information including

- (1) an explanation of the CPQ and the consistency review process;
- (2) identification of coastal resource districts that may have an interest in the project;
- (3) to the extent feasible, identification of applicable enforceable policies;
- (4) identification of the state and federal authorizations likely required for the project and persons to contact in other state or federal agencies;
- (5) to the extent feasible, the identification of the activities that may require a state agency authorization ~~listed~~⁷³ and that are identified⁷⁴ under 6 AAC 50.750 or a federal authorization listed under 6 AAC 50.405 and that are subject to review;
- (6) to the extent feasible, an estimated time schedule for the consistency and resource agency authorization reviews; and
- (7) to the extent feasible, the identification of mandatory ~~studies~~⁷⁵ information⁷⁶ that may be required to determine consistency with the enforceable policies of the ACMP, compliance with state agency authorizations, and potential mitigation requirements.

(d) When an applicant requests pre-review assistance,

(1) the coordinating agency may consult with resource agencies as necessary to assist the coordinating agency in developing the information described in subsection (c)(3)-(7) of this section; and

(2) a resource agency ~~that requires an authorization for an activity that is part of the proposed project~~⁷⁷ may identify issues related to the authorization and potential mitigation requirements and, to the extent feasible, discuss with the applicant how the activity may comply with its statutory and regulatory authorities.

(e) ~~DGC and the resource agencies~~⁷⁸ The coordinating agency⁷⁹ will attempt to inform a coastal resource district of a proposed project that may affect a coastal use or resource within the district. When a formal⁸⁰ pre-review assistance meeting is scheduled, the coordinating agency shall invite a coastal program representative from any potentially affected coastal resource district to the meeting. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160 AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.220. CONSISTENCY REVIEW PACKET. (a) The applicant shall submit a consistency review packet to the coordinating agency that includes

(1) a completed CPQ that includes

(A) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource⁸¹;

(B) a certification that the proposed project complies with and will be conducted in a manner consistent with the ACMP; the certification shall state, "The proposed project complies with the applicable enforceable policies of the ACMP and will be conducted in a manner consistent with the program;"

(C) ~~comprehensive~~⁸² data and information sufficient to support the applicant's consistency certification;

(D) maps, diagrams, technical data and other relevant material that precisely describe the project site location, topographical information, township, range, section, and meridian, and other site specific information; and

(E) a signature and the date signed; and

(2) completed copies of all resource agency authorization applications required for the project, except as provided in (~~e~~⁸³ d⁸⁴) of this section.

(b) When a project requires an authorization from two or more resource agencies, the applicant shall submit the consistency review packet to DGC and any authorization application to the appropriate authorizing agency. When a project requires one or more authorizations from only a single resource agency, the applicant shall submit the consistency review packet to the resource agency.

~~(e) Before a consistency review may commence, the applicant must describe a project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource.~~⁸⁵

~~(d) DGC~~⁸⁶ (c) The coordinating agency⁸⁷, on its own initiative, or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet,⁸⁸ maps or other documents that ~~DGC or~~⁸⁹ the agency cannot duplicate conveniently.

~~(e)~~⁹⁰ d⁹¹ An applicant shall submit directly to the agency responsible for issuing an authorization, an application for a state authorization requiring information that must be held in confidence by law, and any fee associated with a state authorization. The agency shall defer to their statutory requirements concerning the appropriate handling of the confidential information, and forward to the coordinating agency a copy of the application with the confidential information deleted, as appropriate. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.225. DETERMINATION OF COMPLETENESS AND NOTICE TO APPLICANT. (a) ~~As soon as practicable, upon~~⁹² Except as provided under AS 46.14.160, the coordinating agency shall, within 14 days of⁹³ receipt of a consistency review packet, ~~the coordinating agency shall~~⁹⁴ determine whether the packet is complete.

(b) A consistency review packet is complete when

- (1) the packet meets the submission requirements of 6 AAC 50.220;
- (2) an authorizing resource agency determines an authorization application is sufficient to begin a review under its statutory and regulatory requirements; and
- (3) the coordinating agency, in consultation with the authorizing resource agencies, determines the packet is sufficient for continued processing even though additional information may be required subsequently.

(c) If the coordinating agency determines the packet is complete, the coordinating agency shall notify the applicant and identify the ~~approximate timeframe~~⁹⁵ start date⁹⁶ for initiating the consistency review under 6 AAC 50.240.

(d) If the coordinating agency determines the packet is incomplete, the coordinating agency shall notify the applicant and identify the information necessary to make the consistency review packet complete. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.230. DETERMINATION OF THE SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW. The coordinating agency shall determine the scope of the project subject to a consistency review in accordance with 6 AAC 50.025 and 6 AAC 50.700. When a project requires an authorization from more than one resource agency, DGC shall

determine the scope of the project subject to review in consultation with the resource agencies⁹⁷ agency⁹⁸ that ~~require~~⁹⁹ requires¹⁰⁰ an authorization. (Eff. ____/____/200__, Register ____)
Authority: AS 44.19.160 AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.235. TIMING OF A CONSISTENCY REVIEW. (a) ~~The~~¹⁰¹ Except as provided under 6 AAC 50.280, the¹⁰² consistency review process shall be completed within 30 or 50 days.

(b) A project will be subject to a 30-day consistency review when all required authorizations for the activities¹⁰³, as identified under 6 AAC 50.750, are listed as authorizations subject to a 30-day review.

(c) A project will be subject to a 50-day consistency review when a required authorization for an activity¹⁰⁴, as identified under 6 AAC 50.750, is listed as an authorization subject to a 50-day review. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.240. INITIATION OF A CONSISTENCY REVIEW. (a) When a project requires an authorization from two or more resource agencies, DGC shall, following receipt of a complete consistency review packet, ~~obtain concurrence~~¹⁰⁵ start the consistency review as soon as practicable, but no more than 14 days¹⁰⁶ from the ~~authorizing resource agencies regarding a start~~¹⁰⁷ date ~~for the~~¹⁰⁸ DGC receives a complete¹⁰⁹ consistency review ~~that coordinates the consistency review with the resource agency authorization review process.~~¹¹⁰ packet under 6 AAC 50.220.¹¹¹

(b) A single-agency consistency review may start at the time the agency initiates its authorization review, provided the consistency review packet is complete.

(c) Day 1 of a consistency review is the date on which the coordinating agency's public notice is ~~published~~¹¹² provided¹¹³ in accordance with ~~section~~¹¹⁴ 6 AAC 50.500.

(d) By Day 3, the coordinating agency shall

(1) ~~furnish~~¹¹⁵ provide¹¹⁶ to the applicant a notice that the project review has been initiated and a review schedule;

(2) ~~furnish~~¹¹⁷ provide¹¹⁸ to each review participant a copy of the consistency review packet and the review schedule with a solicitation for reviewers' comments and a deadline for receipt of comment; and

(3) ~~furnish~~¹¹⁹ provide¹²⁰ a copy of the consistency review packet to a person requesting the information; or

(4) make a copy of the consistency review packet available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely an affected coastal resource district. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.245. REQUEST FOR ADDITIONAL INFORMATION. (a) By Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, a review participant shall provide the coordinating agency with any request for additional information necessary to determine ~~the project~~¹²¹ whether the requestor concurs with or objects to the applicant¹²²,s

consistency ~~with the ACMP~~¹²³ certification¹²⁴. A resource agency may request additional information necessary for a resource agency authorization review.

(b) The coordinating agency may, by ~~day~~¹²⁵ Day 13 in a 30-day consistency review or by Day¹²⁶ ~~25 of the~~¹²⁷ in a 50-day¹²⁸ consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) The coordinating agency shall request from the applicant additional information relevant to the proposed project appropriate in the context of the requestor's expertise and area of responsibility. If a request for additional information is submitted to the coordinating agency that is outside the requestor's expertise or area of responsibility, the coordinating agency will consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) The applicant shall provide the requested information to the requestor and a copy to the coordinating agency ~~and~~¹²⁹ The coordinating agency shall ensure that¹³⁰ other review participants receive the additional information¹³¹.

(e) The requestor shall notify the coordinating agency when the requested information is received. Within seven days after receiving the information, the requestor shall notify the coordinating agency whether the information is adequate. If the information is found to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed that would satisfy the original request or new issues raised in the response thereto¹³². (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.250. COMMENT DEADLINES. ~~The~~¹³³ Except as provided under¹³⁴ 6 AAC 50.280(a)(1), the¹³⁵ ~~coordinating agency shall establish a comment~~¹³⁶ the¹³⁷ deadline for receipt of ~~public and review participant comment. The deadline for receipt of comment by the coordinating agency shall be~~¹³⁸ comments at¹³⁹ Day 17 in a 30-day review and Day 30 in a 50-day review. The deadline for receipt of comments from a resource agency or coastal resource district may be extended as necessary under 6 AAC 50.280(a)(~~6~~¹⁴⁰ 8). (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.255. REVIEW PARTICIPANT COMMENT. (a) A comment submitted by a review participant shall

(1) be in writing;

(2) ~~cite the enforceable policies and~~¹⁴¹ explain why the ~~commentor believes the~~¹⁴² review participant concurs with or objects to the applicant's consistency certification that the proposed¹⁴³ project ~~is consistent or inconsistent~~¹⁴⁴ complies¹⁴⁵ with and will be conducted in a manner consistency with the¹⁴⁶ applicable enforceable policies of the ACMP¹⁴⁷;

(3) identify any alternative measure necessary to ensure the project is consistent with the enforceable policies of the ACMP; and

(4) provide a justification, based on ~~ACMP~~¹⁴⁸ ~~the~~¹⁴⁹ enforceable policies of the ACMP¹⁵⁰, for any alternative measure the commentor considers necessary to ensure the project is consistent with the enforceable policies of the ACMP.

(b) When a resource agency is reviewing an authorization application for a project undergoing a consistency review, the agency shall identify in its consistency review comment any condition necessary to ensure compliance with the agency's statutory or regulatory authority that is also necessary to ensure the project is consistent with the ACMP.

(c) In its consistency review comment, a review participant may address an enforceable policy outside their expertise or area of responsibility. The coordinating agency may only give a resource agency or coastal resource district due deference within that agency's or district's expertise or area of responsibility.

(d) The coordinating agency shall send or ensure that the applicant,¹⁵¹ each resource agency and any¹⁵² potentially affected coastal resource district ~~receives~~¹⁵³ receive¹⁵⁴ a copy of timely submitted comments. Upon request, the coordinating agency shall send or ensure that other persons interested in the project receive a copy of the comments. (Eff. ___/___/200__, Register ___)

Authority: AS 44.19.160
AS 44.19.161

AS 46.40.040

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.260. ~~DEVELOPMENT OF A~~¹⁵⁵ PROPOSED CONSISTENCY DETERMINATION. (a) ~~By Day 24 in a 30-day review and Day 44 in a 50-day review, the coordinating agency shall distribute a proposed consistency determination to the review participants, the applicant, and any person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c).~~¹⁵⁶ ~~(b)~~¹⁵⁷ In developing a proposed consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give a commenting resource agency and coastal resource district with an approved program due deference within that agency's or district's expertise or area of responsibility. In developing a proposed consistency determination and any applicable alternative measures, the coordinating agency must evaluate the applicability of the enforceable policies to the proposed activity and decide how to afford due deference to the commentors.

(~~e~~¹⁵⁸ b¹⁵⁹) Based on the comments received and other available information, the coordinating agency shall determine whether there is consensus among the review participants regarding a project's consistency with the enforceable policies of the¹⁶⁰ ACMP and any alternative measures necessary to ensure a project is consistent.

(~~d~~¹⁶¹ c¹⁶²) When the comments indicate there is not consensus, the coordinating agency shall facilitate a discussion among the review participants to attempt to reach a consensus. When participants cannot reach consensus, the coordinating agency shall develop a proposed consistency determination that considers the comments and positions of the resource agencies and affected coastal resource districts.

(~~e~~¹⁶³ d¹⁶⁴) When the coordinating agency substantially modifies or rejects an alternative measure requested by a commenting review participant within its respective area of expertise or responsibility, the coordinating agency shall consult with the commentor and provide a brief written explanation stating the reasons for rejecting or modifying the alternative measure before issuance of the proposed consistency determination.

(e) By Day 24 in a 30-day review and Day 44 in a 50-day review, the coordinating agency shall distribute a proposed consistency determination to the review participants, the applicant,

and any person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c).¹⁶⁵

~~€~~¹⁶⁶ ~~(167)~~ ~~f~~¹⁶⁸ ~~A~~¹⁶⁹ The¹⁷⁰ proposed consistency determination must

- (1)¹⁷¹ ~~contain~~¹⁷² ~~(1) a brief~~¹⁷³ a¹⁷⁴ description of the proposed project;
- (2)¹⁷⁵ contain¹⁷⁶ the scope of the project subject to review;
- (3)¹⁷⁷ ~~a brief statement indicating~~¹⁷⁸ indicate¹⁷⁹ whether the state¹⁸⁰
 - (A) concurs with the applicant's consistency certification that the proposed¹⁸¹ project is consistent with the enforceable policies of the ACMP;¹⁸² or ~~inconsistent with~~¹⁸³
 - (B) objects to the applicant's consistency certification that the proposed project is consistent with the enforceable policies of¹⁸⁴ the ACMP; and

(4) contain a statement identifying the availability of an elevation under 6 AAC 50.600.¹⁸⁵

and¹⁸¹ the deadline for submitting a request for elevation ~~and for filing a notice of petition~~¹⁸²

under 6 AAC 50.610 and 6 AAC 50.620, respectively.¹⁸³ 50.600.¹⁸⁴

(g) In addition to the requirements in (f) of this section, when the state ~~determines a project is consistent~~¹⁸⁵ concurs¹⁸⁶ with the ~~ACMP~~¹⁸⁷ applicant's consistency certification¹⁸⁸, the proposed consistency determination must~~(1)~~¹⁸⁹ include an evaluation of the project against the¹⁹⁰ applicable enforceable policies;¹⁹¹ of the ACMP.¹⁹²

~~(2) include any alternative measure determined to be necessary to ensure the project is consistent with an enforceable policy;~~¹⁹³

~~(3) include a brief explanation for a required alternative measure;~~¹⁹⁴

~~(4) include any condition identified under 6 AAC 50.255(b); and~~¹⁹⁵

~~(5) identify the resource agency authorization that will contain an alternative measure determined to be necessary to ensure consistency.~~¹⁹⁶

(h) In addition to the requirements in (f) of this section, when the state ~~determines a project is inconsistent with the ACMP;~~¹⁹⁷ objects to the applicant's consistency certification, the coordinating agency shall notify the applicant of the objection and shall include in¹⁹⁸ the proposed consistency determination~~must explain why the project is inconsistent.~~¹⁹⁹

(1) a statement as to how the proposed activity is inconsistent with the specific enforceable policies of the ACMP;²⁰⁰

(2) the specific enforceable policies and rationale for the inconsistent finding; and²⁰¹

(3) any alternative measure or condition that, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the ACMP; the alternative measure or condition shall be described with sufficient specificity to allow the applicant to determine whether to²⁰²

(A) adopt the alternative; or²⁰³

(B) abandon the project.²⁰⁴

(i) The coordinating agency, with the applicant's concurrence, may issue a revised proposed consistency determination if the coordinating agency is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600.²⁰⁵

(j) The coordinating agency²⁰⁶ may immediately issue a final consistency determination under 6 AAC 50.265²⁰⁷ if the review participants ~~and applicant~~²⁰⁸ concur with the proposed consistency determination and the applicant adopts²⁰⁹ all of the²¹⁰ alternative measures ~~determined to be necessary to ensure consistency with the enforceable policies of the ACMP,~~²¹¹ and ~~no citizen eligible to petition~~²¹² conditions identified²¹³ under ~~6 AAC 50.620~~²¹⁴ submitted timely comments²¹⁵ (h)(3) of this section²¹⁶. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.265. FINAL CONSISTENCY DETERMINATION. (a) The final consistency determination shall meet the requirements of 6 AAC 50.260(f)(1)-(3) and (g) or (h) (1) and (2)²¹⁶ as appropriate, and include any change made between the proposed and final determination²¹⁷ including²¹⁸

(1) the adoption of any alternative measures or conditions by the applicant as part of the project description; and²¹⁹

(2) any minor editorial or technical corrections.²²⁰

(b) The coordinating agency shall distribute the final consistency determination to the applicant, each commenting review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c).

(c) The applicant's project description, as provided in 6 AAC 50.220(a)(1), modified by the adoption of any alternative measure or condition necessary to ensure consistency with the enforceable policies of the ACMP, and described in the final consistency determination issued under (a) of this section is a legally binding description of the project. A resource agency may enforce the adopted alternative measure or condition and the project description according to the agency's priorities, available resources, and preferred methods.²²¹

(e)²²² d²²³ A final consistency determination is a final administrative order and decision under the ACMP. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.270. TIME FOR ISSUANCE OF A FINAL CONSISTENCY

DETERMINATION. (a) The final consistency determination will be issued by Day 30 in a 30-day review and Day 50 in a 50-day review except as described in subsection (b) of this section.

(b) The final consistency determination will be issued

(1) five days after the review participants receive the proposed consistency determination when the coordinating agency does not receive a timely request for a director-level elevation under 6 AAC ~~50.610~~²²⁴ 50.600²²⁵ ~~(a) or a notice of petition under 6 AAC 50.620(e)~~²²⁶;

(2) five days after the review participants receive a director-level proposed consistency determination when a ~~notice of petition, a notice of intent to pursue a petition under 6 AAC 50.620(e), or a~~²²⁷ request for elevation to the commissioners under 6 AAC ~~50.610(h)~~²²⁸ 50.600(i)²²⁹ is not filed on the director-level proposed consistency determination; or²³⁰

~~(3) as soon as practicable after the council dismisses a petition when a proposed consistency determination or director level determination is subject to a petition and there is not a request for elevation to the commissioners;~~²³¹

~~(4) five days after the review participants receive the revised proposed consistency determination following a remand decision by the council on a petition, and when there is not a request for elevation to the commissioners; or~~²³²

~~(5)~~²³³ 3²³⁴ no later than 15 days after the director-level proposed determination is elevated to the commissioners' for a decision. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161	AS 46.40.096	

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.275. RESOURCE AGENCY ~~PROJECT~~²³⁵ AUTHORIZATION. (a) A resource agency shall not issue an authorization for an activity that is part of a project that is subject to a consistency review unless the coordinating agency issues a final consistency determination that has concurred with the applicant's consistency certification that²³⁶ the project is consistent with the²³⁷ applicable enforceable policies of the ACMP²³⁸.

~~(b) An alternative measure developed during a consistency review that is within an authorizing resource agency's expertise or area of responsibility shall be implemented through the agency authorization for the project. An alternative measure not clearly under any resource agency's expertise or responsibility shall be implemented through all resource agency authorizations required for a project.~~²³⁹

~~(c)~~²⁴⁰ b²⁴¹ Following issuance of a final consistency determination, a resource agency may not include an additional alternative measure on its authorization.

~~(d)~~²⁴² c²⁴³ When an agency's authorization contains a condition more restrictive than ~~a similar alternative measure required for consistency with~~²⁴⁴ that described in²⁴⁵ the ~~ACMP~~²⁴⁶ project description under 6 AAC 50.265,²⁴⁷ or ~~an alternative measure included on~~²⁴⁸ the ~~authorization~~²⁴⁹ project description²⁵⁰ is more restrictive than an agency's similar condition, the more restrictive ~~measure~~²⁵¹ project description²⁵² or condition shall be controlling.

~~(e) When there is an administrative appeal of an authorization for an activity that is part of a project, the authorizing agency may not modify an alternative measure included on the resource agency authorization.~~²⁵³

~~(f) When there is an administrative appeal or additional review under an agency's statutory or regulatory authority, a resource agency may modify a condition identified in the final consistency determination if the agency finds the modified condition will remain consistent with the ACMP.~~²⁵⁴

~~(g)~~²⁵⁵ d²⁵⁶ Except for a disposal of interest in state land, when ~~a~~²⁵⁷ the state has concurred with the applicant's consistency certification that the²⁵⁸ project is ~~found~~²⁵⁹ consistent with the enforceable policies of the ACMP, a resource agency shall issue an authorization necessary for a project within five days after the agency issues or receives the final consistency determination, unless the agency finds additional time is necessary to fulfill its statutory or regulatory requirements.

~~(h) When a~~²⁶⁰ e) When the state has concurred with the applicant's consistency certification that the²⁶¹ project is ~~found~~²⁶² consistent with the enforceable policies of the ACMP and after DNR issues ~~a~~²⁶³ or²⁶⁴ receives the final consistency determination, DNR shall ~~issue~~²⁶⁵ authorize²⁶⁶ a disposal of interest in state land at the time and in the manner provided by applicable law, regulation, and agency procedure.

~~(i)~~²⁶⁷ f²⁶⁸ A resource agency authorization may serve as the consistency determination for a project provided

(1) the requirements of 6 AAC 50.500-.520 are met;

(2) the opportunity for ~~petition and~~²⁶⁹ elevation under 6 AAC 50.600-~~680~~²⁷⁰ is provided;

and

(3) the project is evaluated against the enforceable policies of the ACMP.

~~(j)~~²⁷¹ g²⁷² Notwithstanding a ~~consistent~~²⁷³ finding of concurrence²⁷⁴ for a project, a resource agency may deny approval of an authorization application under that agency's own statutory and regulatory authorities.²⁷⁵ ~~(k) An alternative measure implemented through the authorization of a~~

~~resource agency may be enforced by that resource agency according to that agency's priorities, available resources, and preferred methods~~²⁷⁶. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.100
AS 44.19.161 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.280. CONSISTENCY REVIEW SCHEDULE MODIFICATION AND TERMINATION. (a) The coordinating agency may modify the consistency review schedule under the following circumstances and for the time specified:

(1) the coordinating agency and resource agency may agree to modify the review schedule as necessary to coordinate the consistency review with the agency's statutory or regulatory authorization review process, including a DNR disposal of state's interest, provided the length of time for receipt of comments is at least as long as under 6 AAC 50.250;

(2) when the coordinating agency receives a request for additional information from a review participant under 6 AAC 50.245, the coordinating agency may modify the review schedule by up to 3 days to evaluate the request, and consult with other review participants with expertise or responsibility;

(3) when the coordinating agency requests additional information from the applicant under 6 AAC 50.245, the coordinating agency may modify the review schedule as necessary until the requesting review participant receives the information and considers it adequate within the timeframe identified under 6 AAC 50.245(e);

(4) the coordinating agency may modify the review schedule as necessary for a public hearing or public meeting that is held as part of

(A) a consistency review;

(B) a resource agency's review of a necessary authorization application; or

(C) preparation of an affected coastal resource district's comments for submission to the coordinating agency;

(5) the coordinating agency may modify the review schedule as necessary for the adjudication process of an authorization issued by a coastal resource district exercising Title 29 authorities, provided the coastal resource district's consistency review comments under 6 AAC 50.255 are pending the results of the adjudication;

(6) the coordinating agency may extend the review schedule at the request of the applicant;

(7) the coordinating agency may modify the review schedule as necessary to address a complex issue raised during the course of the consistency review;

(8) the coordinating agency may modify the review schedule by up to 5 days for a resource agency or coastal resource district to consider timely submitted public comments;

(9) the coordinating agency may extend the comment deadline by up to 10 days for a project within a coastal resource service area;

(10) the coordinating agency may extend the review schedule by up to 10 days if a review participant requests time for a field review;

(11) the coordinating agency may modify the review schedule as necessary following distribution of the proposed consistency determination to assure the applicant receives the determination;

(12) when the coordinating agency receives a request for elevation under 6 AAC ~~50.610~~²⁷⁷, 50.600²⁷⁸ the coordinating agency shall suspend the review schedule by up to 15 days for each elevation²⁷⁹ ²⁸⁰ ;

~~(13) when the coordinating agency receives a notice of petition under 6 AAC 50.620, the coordinating agency shall extend the review schedule by up to 50 days for the petitioner to file a petition on a proposed consistency determination and the council to act on the petition under AS 46.40.096(e) and~~²⁸¹

~~(A) an additional five days if the council dismisses the petition; and~~²⁸²

~~(B) an additional 15 days if the council remands the proposed consistency determination to the coordinating agency for the coordinating agency to render a revised proposed consistency determination, and an additional five days to provide an opportunity to request elevation of the revised proposed consistency determination under 6 AAC 50.610.~~²⁸³

(b) The coordinating agency shall notify the applicant and each review participant of the terms of a schedule modification.

(c) When the coordinating agency restarts a review that was suspended under this section, the day that the review is restarted shall be assigned the day of the review schedule on which the review was suspended.

(d) A resource agency may deny an authorization any time before, during or after the consistency review has been completed. When an authorization is denied during a consistency review, the coordinating agency and review participants may agree to suspend or terminate the consistency review, as they deem appropriate, on a case by case basis. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

ARTICLE 3. CONSISTENCY REVIEW PROCESS FOR FEDERAL ACTIVITIES **[GENERAL PROVISIONS]**

- 305. Federal Activities Subject to Consistency Review**
- 310. Repealed [ELIGIBILITY TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION]**
- 315. Repealed [CITIZEN OF AN AFFECTED COASTAL RESOURCE DISTRICT]**
- 316. Pre-review Assistance for a Federal Activity**
- 320. Repealed [NOTICE OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION]**
- 325. Federal Consistency Determination**
- 330. Repealed [FILING AND DISTRIBUTION OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION]**
- 335. Initiation of Consistency Review of a Federal Consistency Determination**
- 340. Repealed [RESPONSES TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION]**
- 345. Request for Additional Information for a Federal Consistency Determination**
- 350. Repealed [COUNCIL HEARING OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION]**
- 355. Comment Deadline and Review Schedule Modification or Extension**
- 360. Repealed [PETITION ON PROGRAM IMPLEMENTATION; PROCESS ON THE PETITION]**
- 365. Review Participant Comments Regarding a Federal Consistency Determination**
- 370. Repealed [GENERAL HEARING PROCEDURES ON PETITIONS]**
- 375. Proposed Consistency Response to a Federal Consistency Determination**
- 380. Elevation of and Informal Negotiation on a Federal Consistency Determination**
- 385. Final Consistency Response to a Federal Consistency Determination**
- 390. Resource Agency Authorization**
- 395. Process for Federal Negative Determination**

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.305. FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW. In accordance with 15 C.F.R. 930.30-.46, as amended, federal agency activities which initiate an event or series of events with reasonably foreseeable direct or indirect effects on any coastal use

or resource must be undertaken in a manner consistent, to the maximum extent practicable, with the enforceable policies of the ACMP. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145

6 AAC 50.310 is repealed:

6 AAC 50.310. ELIGIBILITY TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; am 2/13/2000, Register 153; repealed ____/____/200__, Register ____) [(a) Subject to the limits set out in this subsection, the following persons are eligible to petition on a proposed consistency determination to the council as follows:

(1) a citizen of an affected coastal resource district who submitted comments that meet the requirements of 6 AAC 50.100(a) may submit a notice of petition under 6 AAC 50.320(a) following the distribution of a proposed consistency determination under 6 AAC 50.070(i) or a director-level proposed consistency determination under 6 AAC 50.075(c);

(2) a citizen of an affected coastal resource district who submitted comments that meet the requirements of 6 AAC 50.100(a) and who submitted a timely notice of petition on the proposed consistency determination, if action on the petition was postponed due to an elevation request under 6 AAC 50.075(a), may submit a notice of intent to pursue the petition on a director-level proposed consistency determination following distribution of the director-level proposed consistency determination;

(3) an affected coastal resource district that has an approved coastal management program and that submitted comments that meet the requirements of 6 AAC 50.100(a) may submit a notice of petition on a director-level proposed consistency determination following distribution under 6 AAC 50.075(c);

(4) a state agency, including a resource agency, that submitted comments that meet the requirements of 6 AAC 50.100(a) may submit a notice of petition on a director-level proposed consistency determination following distribution of a determination under 6 AAC 50.075(c);

(5) an applicant may submit a notice of petition on a director-level proposed consistency determination following distribution of a determination under 6 AAC 50.075(c).

(b) To remain eligible

(1) a petitioner under (a)(1) of this section must submit a notice of petition on a proposed consistency determination so that the coordinating agency receives the notice within five days after the date that the coordinating agency distributes that determination under 6 AAC 50.070(i) or 6 AAC 50.075(c);

(2) a petitioner under (a)(2) of this section must submit a notice of intent to pursue a petition on a proposed consistency determination so that the coordinating agency receives the notice within five days after the date that the coordinating agency distributes the determination under 6 AAC 50.075(c); and

(3) a petitioner under (a)(3) - (5) of this section must submit a notice of petition on a director-level proposed consistency determination so that the coordinating agency receives the notice within five days after the date that the coordinating agency distributes the determination under 6 AAC 50.075(c).

(c) An eligible petitioner may be represented by counsel or any other person during the petition hearing under 6 AAC 50.370. (Eff. 7/1/99, Register 150; am 2/13/2000, Register 153)]

6 AAC 50.315 is repealed:

6 AAC 50.315. CITIZEN OF AN AFFECTED COASTAL RESOURCE DISTRICT. Repealed. (Eff. 2/13/2000, Register 153; repealed ____/____/200__, Register ____) [(a) For purposes of AS 46.40 and this chapter, a citizen of an affected coastal resource district is a natural person who has been residing in the affected coastal resource district for a minimum of 30 days with the intent to remain in the district indefinitely.

(b) A petitioner under 6 AAC 50.310(a)(1) or (2) shall submit, with the notice of petition filed under 6 AAC 50.320, at least one of the following items to demonstrate that the petitioner meets the criteria under (a) of this section:

(1) a copy of the petitioner's voter registration;

(2) a copy of the petitioner's driver's license;

(3) a copy of the petitioner's motor vehicle registration;

(4) a statement identifying where the petitioner maintains the petitioner's principal place of abode.

(c) The coordinating agency or the council may request additional information it considers necessary to aid the council's determination regarding whether a petitioner under 6 AAC 50.310(a)(1) or (2) meets the criteria under (a) of this section. (Eff. 2/13/2000, Register 153)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.316. PRE-REVIEW ASSISTANCE FOR A FEDERAL AGENCY. At the request of a federal agency, DGC shall provide pre-review assistance in accordance with 6 AAC 50.216. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160 AS 46.40.100

6 AAC 50.320 is repealed:

6 AAC 50.320. NOTICE OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; am 2/13/2000, Register 153; repealed ____/____/200__, Register ____) *[(a) If an eligible petitioner under 6 AAC 50.310 contends that the coordinating agency did not fairly consider the petitioner's comments regarding the consistency of the project with an enforceable policy in an affected coastal resource district's approved program, the petitioner must submit a notice of petition to the coordinating agency if the petitioner wishes to pursue the contention.*

(b) To be accepted, a notice of petition must

(1) be received by the coordinating agency within five days after distribution of either a determination under 6 AAC 50.070(i) or 6 AAC 50.075(c);

(2) include the petitioner's name, mailing address, and street address, and any telephone number and facsimile number at which the petitioner may be reached during the day;

(3) provide information as required under 6 AAC 50.315(b)-(c); and

(4) identify each enforceable policy of the affected coastal resource district's approved program on which the petitioner submitted timely comments under 6 AAC 50.100(a), unless the petitioner is the applicant.

(c) If after receiving the director-level proposed consistency determination, an eligible person under 6 AAC 50.310(a)(2) still contends that the coordinating agency did not fairly consider the petitioner's comments regarding the project's consistency with enforceable policies in the affected coastal resource district's approved program, the petitioner may submit a notice of intent to continue pursuing the petition to the coordinating agency. To be accepted, a notice of intent must be received by the coordinating agency within five days after distribution of the determination under 6 AAC 50.075(c).

(d) Within five days after receiving a notice of petition or intent, the coordinating agency shall inform the petitioner whether the notice is accepted.

(e) If a notice of petition is accepted, a coordinating agency

(1) other than DGC shall, within one day after acceptance, provide DGC a copy of the notice and the proposed consistency determination; and

(2) shall provide the applicant with a copy of the notice. (Eff. 7/1/99, Register 150; am 2/13/2000, Register 153)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.325. FEDERAL CONSISTENCY DETERMINATION. (a) In accordance with 15 C.F.R. 930.30-.46, as amended, a federal agency shall provide DGC a consistency determination for a federal activity affecting any coastal use or resource.

(b) Upon receipt of a federal consistency determination, DGC shall review the determination for completeness in accordance with the requirements of (c) of this section and shall immediately notify the federal agency if the determination is not complete.

(c) To be complete, a federal consistency determination must include:

(1) a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the ~~ACMP~~²⁸⁴ enforceable policies of the ACMP²⁸⁵;

(2) a detailed description of the activity, its associated facilities, and their coastal effects;

(3) an evaluation of the proposed activity against applicable enforceable policies; and
(4) comprehensive data and information sufficient to support the federal agency's consistency statement.

(d) The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses, so long as the requirements of this section are met.

(e) To the extent required by federal law, a federal consistency determination shall include

(1) a copy of any necessary resource agency authorization application; the application must meet the authorizing agency's statutory and regulatory requirements for completeness; and
(2) completed copies of all necessary federal authorization applications. (Eff.

____/____/200__, Register ____)

Authority: AS 44.19.145

AS 44.19.161

AS 46.40.096

AS 44.19.160

AS 46.40.040

6 AAC 50.330 is repealed:

6 AAC 50.330. FILING AND DISTRIBUTION OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

[(a) After filing a timely notice of petition on a proposed consistency

determination or a notice of intent on a director-level proposed consistency determination,

(1) a citizen of an affected coastal resource district must file a petition with the coordinating agency within 20 days after the coordinating agency distributes a

(A) proposed consistency determination issued under 6 AAC 50.070(i) when action on the petition is not postponed due to an elevation under 6 AAC 50.075(a); or

(B) director-level proposed consistency determination issued under 6 AAC 50.075(c); or

(2) petitioners eligible under 6 AAC 50.310(a)(3)-(5) must file a petition with the coordinating agency within 20 days after the coordinating agency distributes a director-level proposed consistency determination issued under 6 AAC 50.075(c).

(b) A petition must identify each enforceable policy of the affected coastal resource district's approved program that the petitioner addressed in comments timely submitted to the coordinating agency under 6 AAC 50.100(a) and that the petitioner contends not to have been fairly considered. A petition may present a brief argument in support of the petition. A petition may not discuss an enforceable policy that was not identified in the notice of petition or introduce new information regarding the consistency of the project with an affected coastal resource district's enforceable policies.

(c) Within three days of receiving the petition, the coordinating agency shall provide a copy of the petition to

(1) DGC, if the coordinating agency is other than DGC; and

(2) the applicant. (Eff. 7/1/99, Register 150)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.335. INITIATION OF CONSISTENCY REVIEW OF A FEDERAL CONSISTENCY DETERMINATION. (a) The consistency review process, as contained in 6 AAC 50.305-.395, shall be initiated, coordinated, and completed, to the extent practicable, within the timeframes specified in 15 C.F.R. 930, Subpart C.

(b) Upon receipt of a complete federal consistency determination as defined in 6 AAC 50.325(c), (d), and (e), DGC will immediately²⁸⁶ initiate a coordinated consistency review as follows:

(1) establish Day 1 of the consistency review as the date on which the public notice is ~~published~~²⁸⁷ provided²⁸⁸ in accordance with 6 AAC 50.500; and

(2) by Day 3, DGC shall

(A) ~~furnish~~²⁸⁹ provide²⁹⁰ to the ~~applicant~~²⁹¹ federal agency²⁹² a notice that the project review has been initiated and a review schedule;

(B) ~~furnish~~²⁹³ provide²⁹⁴ to each review participant a copy of the federal consistency determination ~~and~~²⁹⁵ supporting information²⁹⁶ ~~and~~²⁹⁷ a review schedule with a solicitation for the reviewer's comment²⁹⁹ and a deadline for receipt of comment; and

(C) ~~furnish~~³⁰⁰ provide³⁰¹ a copy of the federal consistency determination and supporting information to a person requesting the information; or

(D) make a copy of the federal consistency determination and supporting information available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely an affected coastal resource district. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160
AS 44.19.161

AS 46.40.040

AS 46.40.096

6 AAC 50.340 is repealed:

6 AAC 50.340. RESPONSES TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)
[(a) In response to a petition received under 6 AAC 50.330(b), the coordinating agency shall prepare an evaluation that must address the steps that the coordinating agency took to fairly consider the petitioner's comments.

(b) DGC shall

(1) prepare a written recommendation for consideration by the council on

(A) whether the petitioner is eligible to petition under 6 AAC 50.310;

(B) whether the district whose approved program is cited in the petitioner's comments is an affected coastal resource district; and

(C) the petition; and

(2) provide the petitioner and the applicant with a copy of the recommendation prepared under (1) of this subsection.

(c) An applicant may submit to DGC a response to the petition. To be considered,

(1) DGC must receive the response within 10 days after the coordinating agency distributes the petition under 6 AAC 50.330(c); and

(2) the response must address only issues being evaluated and considered as part of the recommendation under (a) and (b) of this section.

(d) Within 10 days after the coordinating agency receives the petition, the coordinating agency shall provide the petitioner and the applicant a copy of the evaluation prepared under (a) of this section. A coordinating agency, other than DGC, shall send DGC

(1) the analysis or documentation developed by the coordinating agency in conjunction with the consistency review;

(2) a copy of the evaluation prepared under (a) of this section; and

(3) documentation that a copy of the evaluation was sent to the petitioner and the applicant. (Eff. 7/1/99, Register 150)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.345. REQUEST FOR ADDITIONAL INFORMATION FOR A FEDERAL CONSISTENCY DETERMINATION. (a) By Day 25 of the coordinated consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with³⁰² or objects to the federal consistency determination.

(b) DGC may request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the federal agency additional information relevant to the proposed project that is appropriate in the context of the requestor's area of expertise or responsibility. If a request for additional information is submitted that is outside the requestor's area of expertise or responsibility, DGC will consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) Unless otherwise agreed to by DGC and the federal agency, the federal agency shall provide the requested information to DGC. The applicant shall provide sufficient copies of the requested information to DGC for distribution to other interested review participants. DGC shall provide the requested information to the requestor and other interested review participants.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is found to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed that would satisfy the original request or new issues raised in the response thereto³⁰³. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

AS 44.19.161

6 AAC 50.350 is repealed:

6 AAC 50.350. COUNCIL HEARING OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

[(a) Within 30 days after the filing of a petition under 6 AAC 50.330(a), unless a shorter time is set under (f) of this section, the council will consider the petition at a hearing held in accordance with 6 AAC 50.370.

(b) Council review of a petition on a proposed consistency determination is limited to consideration of whether

(1) a petitioner is eligible to petition under 6 AAC 50.310;

(2) the district whose approved program is cited in the petitioner's comments is an affected coastal resource district; and

(3) the coordinating agency fairly considered a comment that

(A) the petitioner timely submitted under 6 AAC 50.100(a); and

(B) identified an enforceable policy of an approved program for an affected coastal resource district and explained how the project would be inconsistent with the policy.

(c) In determining whether a coordinating agency fairly considered a petitioner's comment, the council will rely on material in the administrative record including the following:

(1) documentation demonstrating how the coordinating agency responded to the petitioner's comment, or showing that the coordinating agency referred the comment to another state or federal agency for review and demonstrating how that agency responded to the petitioner's comment; and

(2) development, by the coordinating agency or another state agency as part of the proposed consistency determination, of a stipulation to address the concern raised in the petitioner's comment.

(d) The council will dismiss a petition that seeks review of

(1) the substantive merits of a proposed consistency determination;

(2) a conclusive consistency determination; or

(3) the coordinating agency's treatment of a comment

(A) that a petitioner did not timely submit as required under 6 AAC 50.100(a);

(B) from a petitioner who is not eligible to file a petition on a proposed consistency determination; or

(C) that does not address an enforceable policy of an approved program for an affected coastal resource district.

(e) Except as provided in (f) of this section, the council will issue a decision on the petition within 30 days after a petition is filed under 6 AAC 50.330 and after a hearing under (a) of this section. The council will, in its discretion, adopt as its decision the recommendation prepared by DGC under 6 AAC 50.340(b). If the council

(1) remands the proposed consistency determination, the coordinating agency shall

(A) render and distribute a revised proposed consistency determination to each review participant, the applicant, and the petitioner within 15 days after the council decision; and

(B) render the conclusive consistency determination five days after distributing the revised proposed consistency determination, unless within that five-day period the coordinating agency receives a request for elevation under 6 AAC 50.075(f); or

(2) dismisses the petition, the coordinating agency shall render the conclusive consistency determination within five days after the dismissal and distribute that determination to each review participant, each person who submitted comments under 6 AAC 50.100(a), and each person listed in 6 AAC 50.120(b), unless an elevation had been requested under 6 AAC 50.075(d)(3) and was postponed under 6 AAC 50.075(e).

(f) If the state response under 16 U.S.C. 1456(c) is due before the expiration of the 30-day period for the council to decide a petition on a proposed consistency determination, DGC may shorten as necessary

(1) the time period between public notice of a hearing on the petition and the hearing; or

(2) the time available for council review of a petition.

(g) The council's decision under (e) of this section is a final administrative order and decision when the conclusive consistency determination is rendered in accordance with 6 AAC 50.120.

(h) Nothing in this chapter requires a person to file a petition on a proposed consistency determination to pursue other legal remedies as permitted by law. (Eff. 7/1/99, Register 150)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.355. COMMENT DEADLINE AND REVIEW SCHEDULE MODIFICATION OR EXTENSION. (a) The coordinating agency shall establish a 30-day comment deadline for receipt of public and review participant comment.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), provided the final consistency response is submitted to the federal agency by the deadline set by federal regulation at 15 C.F.R. 930.30-.46, as amended, including any extensions granted by the federal agency. (Eff. ___/___/200__, Register ___)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50.360 is repealed:

6 AAC 50.360. PETITION ON PROGRAM IMPLEMENTATION; PROCESS ON THE PETITION. Repealed. (Eff. 7/1/99, Register 150; repealed ___/___/200__, Register ___)

[(a) A petition on program implementation must be submitted in writing to DGC. The petition must

(1) give the petitioner's name, mailing address, and street address, and a telephone number, and any facsimile number, at which the petitioner may be reached;

(2) include a list of points that the person intends to argue in the petition;

(3) explain how the approved program of the district is not being implemented, enforced, or complied with; and

(4) suggest an alternative action that will implement, enforce, or comply with the approved program of the district.

(b) In a petition on program implementation, a petitioner may not challenge a proposed or conclusive consistency determination rendered under AS 46.40.096, AS 46.40.100(b)(1), and this chapter.

(c) For a petition on program implementation, DGC shall prepare and submit to the council draft written findings and a draft written decision. The council will, in its discretion, adopt as its findings and decision the draft findings and decision from DGC.

(d) Within five days after the decision by the council, DGC shall distribute that decision to the petitioner, each affected coastal resource district, and each state agency and person whom DGC identifies as having an interest in the petition.

(e) The effective date of a council decision is the date of its distribution by DGC. On or after the date of distribution, the council decision is a final administrative decision under the ACMP. (Eff. 7/1/99, Register 150)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.365. REVIEW PARTICIPANT COMMENTS REGARDING A FEDERAL CONSISTENCY DETERMINATION. A comment submitted by a review participant shall

- (1) be in writing;
 - (2) explain why the ~~reviewer~~³⁰⁴ review participant³⁰⁵ concurs with³⁰⁶ or objects to the federal consistency determination that the proposed project complies with and will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP³⁰⁷; and
 - (3) identify any condition or alternative measure that, if adopted by the federal agency, would permit the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP. (Eff. ____/____/200__, Register ____)
- Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50.370 is repealed:

6 AAC 50.370. GENERAL HEARING PROCEDURES ON PETITIONS. Repealed.
(Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____) [(a) For petitions filed under 6 AAC 50.330 or 6 AAC 50.360, the council will conduct a petition hearing. A petition hearing may be conducted by teleconference.

(b) The council will, in its discretion, conduct a petition hearing by establishing a quorum of council members to conduct the hearing and make a decision. If more than one petition is filed regarding the same proposed consistency determination, the council will, in its discretion, review those petitions at the same hearing. If a quorum cannot be established before the hearing date, the council will, in its discretion, assign at least one council member to preside over the hearing and will establish a quorum of council members at a later date to make a decision. Before making a decision at a later date, participating council members who did not attend the hearing must review the tape or transcript of the hearing and

- (1) the relevant portions of the administrative record for a petition on a proposed consistency determination; or
 - (2) the documentary evidence presented at the hearing, for a petition on program implementation.
- (c) For a petition on a proposed consistency determination,
- (1) DGC shall briefly summarize the issues presented to the council for review;
 - (2) the petitioner, the applicant, the affected coastal resource district, and the coordinating agency may present a brief oral argument or testimony;
 - (3) DGC shall present its recommendation prepared under 6 AAC 50.340(b) for council consideration; and
 - (4) the burden of proof is on the petitioner.

(d) The council will convene a hearing to consider a petition on program implementation during the next scheduled council meeting or within 60 days, unless all parties to the hearing agree to a reasonable time extension. In a hearing held on a petition on program implementation

- (1) the burden of proof is on the petitioner;
- (2) the council will allow admission of material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs; and
- (3) formal rules of evidence need not apply. (Eff. 7/1/99, Register 150)]

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.375. PROPOSED CONSISTENCY RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION. (a) DGC shall develop a proposed consistency response in accordance with 6 AAC 50.260(~~b~~^{308, 309})-(d) and (~~i~~^{310, 311}).

(b) By day 44 of the coordinated consistency review, DGC will provide a federal agency a proposed consistency response ~~indicating whether the state:~~³¹² that³¹³

- ~~(1) concurs with the federal agency's consistency determination; or~~³¹⁴
- ~~(2) objects to the federal agency's consistency determination.~~³¹⁵
- ~~(c) At a minimum, a proposed consistency response must contain~~³¹⁶

- (1) ~~a brief~~³¹⁷ contains a³¹⁸ description of the proposed federal activity;
- (2) contains³¹⁹ the scope of the ~~project~~³²⁰ federal activity³²¹ subject to review;
- (3) ~~a brief statement indicating~~³²² indicates³²³ whether the state ~~concurs with or objects to~~³²⁴
 - (A) concurs with³²⁵ the ~~federal~~³²⁶ federal³²⁷ agency's consistency determination;
 - (B) objects to the federal agency's consistency determination; or³²⁹
 - (C) requests an extension for the state consistency response; and³³⁰
- and³³¹ (4) contains a statement identifying the availability of an elevation under 6 AAC 50.600.³³² the deadline for submitting a request for elevation ~~and for filing a notice of petition~~³³³ under 6 AAC ~~50.610 and 6 AAC 50.620, respectively.~~³³⁴ 50.600.³³⁵ (d³³⁶ c³³⁷ b³³⁸) In addition to the requirements in (~~e~~³³⁹ d³⁴⁰) of this section, when the state concurs with the federal consistency determination that a proposed federal activity is consistent with the enforceable policies of the ACMP, the proposed consistency response must include an evaluation of the project against applicable enforceable policies sufficient to support the consistent finding. The evaluation may reference the federal consistency determination, if the determination sufficiently supported the consistency finding that the proposed federal activity is consistent with the enforceable policies of the ACMP.
- (e³⁴¹ d³⁴²) In addition to the requirements in (~~e~~³⁴¹ b³⁴²) of this section, when the state objects to the federal agency's consistency determination, DGC shall notify the federal agency and the Director of OCRM of the objection in the proposed consistency response. The response shall include:
 - (1) a statement as to how the proposed activity is inconsistent with specific ACMP enforceable policies;
 - (2) the specific enforceable policies, including citations;
 - (3) any alternative measure and condition³⁴³ that, if adopted by the federal agency, would permit the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP;
 - (4) if the objection is based on the failure of the federal agency to supply adequate information ~~under (e) of this section~~³⁴⁴, the nature of the information requested for further consideration.³⁴⁵ ~~and the~~³⁴⁶ an explanation regarding the necessity of having such information; and
 - (5) a statement informing the federal agency of the availability of elevation under 6 AAC ~~50.610~~³⁴⁷ 50.600³⁴⁸ and informal negotiation under 15 C.F.R. 930.111, as amended.
- ~~(f~~³⁴⁹ e³⁵⁰) A proposed consistency response is not the final response for purposes of federal consistency and is subject to elevation ~~and petition~~³⁵¹ under 6 AAC ~~50.600-.680.~~³⁵² 50.600.³⁵³ (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.380. ELEVATION OF AND INFORMAL NEGOTIATION ON A PROPOSED CONSISTENCY RESPONSE. When a federal agency requests an elevation of the proposed consistency response, the elevation is informal negotiation under 15 C.F.R.

930.111, as amended. OCRM may be invited to assist in an elevation requested by a federal agency. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.385. FINAL CONSISTENCY RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION. (a) By day 50 of the coordinated consistency review, DGC will provide a federal agency with a final consistency response indicating whether the state:

(1) concurs with the federal agency's determination; ~~or~~³⁵⁴

(2) objects to the federal agency's determination; ~~or~~^{355 356}

~~(3) requests an extension for the state response.~~³⁵⁷

(b) When, following an elevation, the state continues to object to the federal agency's consistency determination, DGC shall notify the federal agency and the Director of OCRM of the objection in a final consistency response. The final response shall include:

(1) a statement as to how the proposed activity is inconsistent with specific ACMP enforceable policies;

(2) the specific enforceable policies, including citations;

(3) any alternative measure that, if adopted by the federal agency, would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the ACMP; and

(4) a statement informing the federal agency of the availability of the negotiation and mediation procedures of the Secretary of Commerce in accordance with 15 C.F.R. 930.110-.116, as amended. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.020 AS 46.40.096
AS 44.19.160 AS 46.40.040 AS 46.40.100
AS 44.19.161

Editor's note: A federal agency proposing an activity should refer to 15 C.F.R. 930.30-.46, as amended, for federal agency responsibility under federal regulation.

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.390. RESOURCE AGENCY AUTHORIZATION. When a federal activity requires an authorization from a resource agency,

(1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process such that the federal timelines are met;

~~(2) an alternative measure necessary to ensure consistency that is identified in the final consistency response shall be included in the appropriate resource agency authorization in accordance with 6 AAC 50.275(b);~~³⁵⁸

~~(3) where there is an administrative appeal of an authorization for an activity that is part of a project, the authorizing agency may not modify an alternative measure included on the resource agency authorization;~~³⁵⁹ ~~(4) when there is an administrative appeal or additional review under an agency's statutory or regulatory authority, a resource agency may modify a condition identified in the final consistency determination if the agency finds the modified condition will remain consistent with the enforceable policies of the ACMP;~~³⁶⁰ and

~~(5)~~³⁶¹ ³⁶² when a federal agency seeks mediation from the Secretary of Commerce, a resource agency shall not issue an authorization until negotiation is concluded; a final

consistency response may be amended to reflect the outcome of the negotiation and mediation process. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.100
AS 44.19.161 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.395. PROCESS FOR FEDERAL NEGATIVE DETERMINATIONS. (a) In accordance with 15 C.F.R. 930.35, as amended, when a federal agency determines that there will not be effects to coastal uses and resources from a proposed federal activity, the federal agency shall provide DGC with a negative determination if the activity meets the criteria specified in 15 C.F.R. 930.35(a).

(b) A negative determination shall include

- (1) a brief description of the activity;
- (2) a map showing the activity's location; and
- (3) the basis for the federal agency's determination that the activity will not affect any coastal use or resource.

(c) Upon receipt of a complete negative determination, DGC shall solicit comments regarding concurrence or objection to the negative determination from each resource agency and any potentially affected coastal resource district. DGC shall establish the deadline for receipt of comment as appropriate based on the scope and complexity of the activity.

(d) Within 60 days of receipt of a complete negative determination, DGC will

- (1) concur with the federal agency's negative determination;
- (2) object to the federal agency's negative determination; or
- (3) request, in writing, an extension for the state response.

(e) When the state objects to a negative determination, the federal agency and DGC shall follow the process in 15 C.F.R. 930.35(c), as amended. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

ARTICLE 4. CONSISTENCY REVIEW PROCESS FOR FEDERALLY REGULATED ACTIVITIES

- 405. Federally Regulated Activities Subject to Consistency Review**
- 416. Pre-review Assistance for an Applicant for a Federal Authorization**
- 425. Consistency Certification**
- 435. Initiation of Consistency Review for a Consistency Certification**
- 445. Request for Additional Information for a Consistency Certification**
- 455. Comment Deadlines and Review Schedule Modifications and Extensions**
- 465. Review Participant Comments Regarding a Consistency Certification**
- 475. Proposed Consistency Response to a Consistency Certification**
- 485. Final Consistency Response to a Consistency Certification**
- 490. Resource Agency Authorization**
- 495. Review Process for OCS Exploration, Development and Production Activities**

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.405. ACTIVITIES REQUIRING A FEDERAL AUTHORIZATION SUBJECT TO CONSISTENCY REVIEW. (a) In accordance with 15 C.F.R. 930.50-.66, as amended, activities requiring a federal authorization affecting any coastal use or resource are required to be conducted in a manner consistent with the enforceable policies of the ACMP. Federal authorizations subject to consistency review include

- (1) Department of Agriculture, United States Forest Service permit for
 - (A) outfitter/guide for freshwater boat trips that include a designated area for exclusive commercial use by the permit holder;
 - (B) Mining Plans of Operation that require an Environmental Analysis or Environmental Impact Statement;
 - (C) mineral material sales and sites that are greater than five acres or not previously reviewed;
 - (D) hotel, motel, resort, service station, fish hatchery, mariculture, liquid waste disposal area, sewage transmission line, hydroelectric projects, oil and gas pipelines, airport, heliport, dam, reservoir, water transmission, fish ladder, power lines, telephone lines, water easement;
 - (E) ground disturbing construction that require an EA or EIS, or that require one or more of the following types ~~on~~³⁶³ of³⁶⁴ non-Forest Service permits:
 - (i) Environmental Protection Agency under Section 402 of the Clean Water Act;
 - (ii) U. S. Army Corps of Engineers under Section 404 of the Clean Water Act;
 - (iii) ADEC wastewater, solid waste, or air discharge permits;
 - (iv) ADFG Title 16 authorizations; or
 - (v) ADNR water rights and tidelands authorizations;
- (2) Department of Commerce, Office of Ocean and Coastal Resource Management, permit within Marine Sanctuaries under 33 U.S.C. 1401-1444;
- (3) Department of Defense, Army Corps of Engineers permit
 - (A) under ~~Sections 9 and~~³⁶⁵ Section³⁶⁶ 10 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters;
 - (B) under Section 4(F) of the Outer Continental Shelf Lands Act and amendment, authorizing artificial islands or fixed structures on the outer continental shelf;
 - (C) under Section 103 of the Marine Protection Research and Sanctuaries Act, authorizing ocean dumping outside the limits of the territorial sea; and
 - (D) under Section 404 of the Federal Water Pollution Control Act, authorizing discharges into navigable waters;
- (4) Department of Energy, Federal Energy Regulatory Commission
 - (A) license for the construction and operation of non-federal hydroelectric projects and associated transmission lines under sections 4 (e) and 15 of the Federal Power Act at 16 U.S.C. 787(e) and 808;
 - (B) order for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act at 16 U.S.C. 824a(b);
 - (C) permission and approval for the abandonment of natural gas pipeline facilities under section 7(b) of the Natural Gas Act at 717f(b); and
 - (D) certificate of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under section 7(c) of the Natural Gas Act at 15 U.S.C. 717f(c);
- (5) Environmental Protection Agency
 - (A) permit required under Section 402 of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters;
 - (B) permit required under Section 405 of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge;

(C) permit for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under Section 112(c)(1) of the 1972 Clean Air Act; and³⁶⁷

(D) exemptions granted under the Clean Air Act for stationary sources; ~~and~~³⁶⁸

~~(E) in conjunction with the Alaska Department of Environmental Conservation, joint permit under Resource Conservation and Recovery Act of 1978;~~³⁶⁹

(6) Department of the Interior

(A) Bureau of Land Management permit and license for drilling and mining and related facilities on public lands;

(B) Bureau of Land Management and Minerals Management Service permit for pipeline rights-of-way on public lands and the Outer Continental Shelf;

(C) permit and license for rights-of-way on public lands; and

(D) Minerals Management Service ~~permit and license required for drilling and mining on~~³⁷⁰ Outer Continental Shelf ~~lands~~³⁷¹ exploration or development and production plan permit and license³⁷²;

(7) Nuclear Regulatory Commission permit and license for the siting, construction, and operation of nuclear facilities;

(8) Department of Transportation, United States Coast Guard permit ~~for~~³⁷³

(A) for³⁷⁴ construction or modification of bridge structures and causeways across navigable waters; ~~and~~³⁷⁵

(B) for³⁷⁶ siting, construction, and operation of deepwater ports;³⁷⁷

(c) under Section 9 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters³⁷⁸; and

(9) permit and license subject to 15 C.F.R. 930.54(c).

(b) In accordance with 15 C.F.R. 930.54, as amended, DGC may notify a federal agency, the applicant, and the Director of OCRM of unlisted activities requiring a federal authorization affecting any coastal use or resource that requires a consistency review. An unlisted federal authorization shall be subject to coastal program review upon approval by the Director of OCRM. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.416. PRE-REVIEW ASSISTANCE FOR AN APPLICANT FOR A FEDERAL AUTHORIZATION. At the request of an applicant for a federal authorization, DGC shall provide pre-review assistance in accordance with 6 AAC 50.216. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160 AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.425. CONSISTENCY CERTIFICATION. (a) In accordance with 15 C.F.R. 930.50-.66, as amended, an applicant for a federal authorization subject to ~~coastal program~~³⁷⁹ review under the ACMP³⁸⁰ shall provide in the application to the federal authorizing agency a certification that the project complies with and will be conducted in a manner consistent with the ACMP. The applicant shall provide a copy of the certification to DGC along with the necessary data and information identified in (c) of this section.

(b) ~~Upon~~³⁸¹ Except as provided for in AS 46.14.160, DGC shall, within 14 days of³⁸² receipt of a consistency ~~certification~~³⁸³ determination³⁸⁴, ~~DGC shall~~³⁸⁵ review the information and data

for completeness in accordance with the requirements of (c) of this section and shall ~~promptly~~³⁸⁶ notify the applicant if the information and data are not complete.

(c) To be complete, a consistency certification must include a completed CPQ which includes

(1) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource³⁸⁷;

(2) ~~comprehensive~~³⁸⁸ data and information sufficient to support the applicant's consistency certification;

(3) maps, diagrams, technical data and other relevant material that precisely describe the site location, topographical information, township, range, section, and meridian, and other site specific information;

(4) the applicant's consistency certification as required by (a) of this section, which shall state "The proposed project complies with the applicable enforceable policies of the Alaska coastal management program and will be conducted in a manner consistent with the program;"

(5) a signature and the date signed;

(6) a copy of ~~any~~³⁸⁹ all³⁹⁰ resource agency authorization applications required for the project, except as provided in (f) of this section; the application must meet the authorizing resource³⁹¹ agency's statutory and regulatory requirements for completeness; and

(7) completed copies of all necessary federal authorization applications.

(d) If an applicant fails to submit a complete consistency certification, DGC shall, ~~within 30 days of receipt of the incomplete information,~~³⁹² notify the applicant and the federal agency of the certification or information deficiencies, and that

(1) the consistency review has not begun and that the review will commence when the applicant corrects the certification or information deficiencies; or

(2) the consistency review has begun, and that the applicant shall correct the certification or information deficiencies ~~must be~~³⁹³ during the review period.

(e) DGC, on its own initiative or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet³⁹⁴ maps or other documents that DGC or the agency cannot duplicate conveniently.

(f) An applicant shall submit directly to the agency responsible for issuing an authorization, an application for a federal or state authorization requiring information that must be held in confidence by law, and any fee associated with the authorization. The agency shall defer to their statutory requirements concerning the appropriate handling of the confidential information, and forward to the coordinating agency a copy of the application with the confidential information deleted, as appropriate. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.435. INITIATION OF CONSISTENCY REVIEW FOR A CONSISTENCY CERTIFICATION. ~~Upon~~³⁹⁵ Within 14 days of³⁹⁶ receipt of a complete consistency certification or a consistency certification under 6 AAC 50.425(d)(2), DGC will initiate a coordinated consistency review as follows:

(1) establish Day 1 of the consistency review as the date on which the public notice is ~~published~~³⁹⁷ provided³⁹⁸ in accordance with 6 AAC 50.500; and

(2) by Day 3, DGC shall

(A) ~~furnish~~³⁹⁹ provide⁴⁰⁰ to the applicant and federal agency a notice that the project review has been initiated and a review schedule;

(B) ~~furnish~~⁴⁰¹ provide⁴⁰² to each review participant a copy of the consistency certification ~~and~~⁴⁰³ ~~supporting information~~⁴⁰⁴ ~~and~~⁴⁰⁵ ~~a review schedule that includes a solicitation for reviewers' comments~~⁴⁰⁶ ~~and a deadline for receipt of comment~~⁴⁰⁷; and

(C) ~~furnish~~⁴⁰⁸ provide⁴⁰⁹ a copy of the consistency certification and supporting information to a person requesting the information; or

(D) make a copy of the consistency certification and supporting information available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely an affected coastal resource district. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.445. REQUEST FOR ADDITIONAL INFORMATION FOR A CONSISTENCY CERTIFICATION. (a) By Day 25 of the coordinated consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with⁴¹⁰ or objects to the consistency certification.

(b) DGC may, by Day 25 of the consistency review⁴¹¹ request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the applicant additional information relevant to the proposed project that is appropriate in the context of the requestor's area of expertise or responsibility. If a request for additional information is submitted that is outside the requestor's area of expertise or responsibility, DGC will consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) Unless otherwise agreed to by DGC and the applicant, the applicant shall provide the requested information to DGC. The applicant shall provide sufficient copies of the requested information to DGC for distribution to other interested review participants. DGC shall provide the requested information to the requestor and other interested review participants.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is found to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed that would satisfy the original request or new issues raised in the response thereto⁴¹² (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.455. COMMENT DEADLINES AND REVIEW SCHEDULE MODIFICATIONS AND EXTENSIONS. (a) ~~The coordinating agency~~⁴¹³ Except as provided under 6 AAC 50.280(a)(1), DGC⁴¹⁴ shall establish a 30-day comment deadline for receipt of public and review participant comment.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), provided the final consistency response is submitted to the federal agency by the deadline set by federal law at 15 C.F.R. 930.50-.66, as amended.

(c) To the extent feasible, DGC shall adhere to the deadlines for issuance of a proposed and final consistency response in this chapter. If DGC has not issued a proposed consistency response within three months of receipt of a complete consistency certification, DGC shall notify the applicant and federal agency of the status of the review and the reason for further delay.

(d) DGC and an applicant may mutually agree to stay the consistency review or extend the six-month federal review period. An agreement must be in writing. DGC shall provide a copy of the agreement to the federal authorizing agency. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.465. REVIEW PARTICIPANT COMMENTS REGARDING A CONSISTENCY CERTIFICATION. (a) A comment submitted by a review participant shall

- (1) be in writing;
- (2) ~~cite the enforceable policies and~~⁴¹⁵ explain why the ~~commentor~~⁴¹⁶ review participant⁴¹⁷ concurs with⁴¹⁸ or objects to the applicant's consistency certification that the proposed project complies with and will be conducted in a manner consistency with the enforceable policies of the ACMP⁴¹⁹;
- (3) identify any alternative measure necessary to ensure that the project is consistent with the enforceable policies of the ACMP; and
- (4) provide a justification, based on ~~ACMP~~⁴²⁰ the⁴²¹ enforceable policies of the ACMP⁴²², for any alternative measure the commentor considers necessary to ensure the project is consistent with the enforceable policies of⁴²³ the ACMP.

(b) When a resource agency is reviewing an authorization application for a project undergoing a consistency review, the agency shall identify in its consistency review comment any condition necessary to ensure compliance with the agency's statutory or regulatory authority that is also necessary to ensure the project is consistent with the enforceable policies of the ACMP.

(c) In its consistency review comment, a review participant may address an enforceable policy outside their area of expertise or responsibility. ~~The coordinating agency~~⁴²⁴ DGC⁴²⁵ may only give a resource agency or coastal resource district due deference within that agency's or district's area of expertise or responsibility.

(d) ~~The coordinating agency~~⁴²⁶ DGC⁴²⁷ shall send or ensure that the applicant⁴²⁸ each resource agency and any⁴²⁹ potentially affected coastal resource district receives a copy of timely submitted comments. Upon request, ~~the coordinating agency~~⁴³⁰ DGC⁴³¹ shall send a copy of the comments to other persons interested in the project. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.475. PROPOSED CONSISTENCY RESPONSE TO A CONSISTENCY CERTIFICATION. (a) DGC shall develop a proposed consistency response in accordance with 6 AAC 50.260(~~b~~⁴³² a⁴³³)-(d) and (~~i~~⁴³⁴ j⁴³⁵).

(b) By day 44 of the coordinated consistency review, DGC shall provide the applicant, the⁴³⁶ federal agency, each commenting review participant, an agency that commented on the project⁴³⁷ and ~~the applicant with~~⁴³⁸ a proposed consistency response indicating whether the⁴³⁹ ~~state~~

person who submitted timely ACMP comments under 6 AAC 50.500⁴⁴⁰ ~~(1) a~~⁴⁴¹ a⁴⁴²) ~~concurs with the applicant's certification; or~~⁴⁴³

~~(2) objects to the applicant's certification.~~⁴⁴⁴ ⁴⁴⁵ (c) ~~At a minimum,~~⁴⁴⁶ with⁴⁴⁷ a proposed consistency response ~~must contain~~⁴⁴⁸ that⁴⁴⁹

(1) ~~a brief~~⁴⁵⁰ contains a⁴⁵¹ description of the proposed ~~federal activity~~⁴⁵² project⁴⁵³;

(2) contains⁴⁵⁴ the scope of the project subject to review;

(3) indicates whether the state⁴⁵⁵

(A) concurs with the applicant's consistency certification that the proposed project is consistency with the enforceable policies of the ACMP; or⁴⁵⁶

(B) objects to the applicant's consistency certification that the proposed project is consistency with the enforceable policies of the ACMP; and⁴⁵⁷

~~(3)~~⁴⁵⁸ 4) contains⁴⁵⁹ ~~a brief~~⁴⁶⁰ statement ~~indicating whether the state concurs or objects to the consistency certification;~~⁴⁶¹ identifying the availability of an elevation under 6 AAC 50.600,⁴⁶² and ~~(4)~~⁴⁶³ the deadline for submitting a request for elevation ~~and for filing a notice of petition~~⁴⁶⁴ under 6 AAC ~~50.610 and 6 AAC 50.620, respectively.~~⁴⁶⁵ 50.600.⁴⁶⁶

~~(d)~~⁴⁶⁷ c⁴⁶⁸) In addition to the requirements in (~~e~~⁴⁶⁹ b⁴⁷⁰) of this section, when the state concurs with the applicant's⁴⁷¹ consistency certification ~~that a proposed project is consistent with the ACMP~~⁴⁷², the proposed consistency response must include an evaluation of the project against the⁴⁷³ applicable enforceable policies of the ACMP⁴⁷⁴ sufficient to support the ~~consistent~~⁴⁷⁵ finding.

~~(e)~~⁴⁷⁶ d⁴⁷⁷) In addition to the requirements in (~~e~~⁴⁷⁸ b⁴⁷⁹) of this section,⁴⁸⁰ when the state objects to the applicant's consistency certification, DGC shall notify the applicant, the⁴⁸¹ federal agency,⁴⁸² and the Director of OCRM of its objection in the proposed consistency response. The response shall include

(1) a statement as to how the proposed project is inconsistent with the⁴⁸³ specific enforceable policies of the ACMP⁴⁸⁴;

(2) the specific enforceable policies, ~~including citations~~⁴⁸⁵ and rationale for the inconsistent finding⁴⁸⁶;

(3) any ~~condition or~~⁴⁸⁷ alternative measure or condition⁴⁸⁸ that, if adopted by the applicant, would permit the proposed project to be conducted in a manner consistent with the⁴⁸⁹ applicable ~~ACMP~~⁴⁹⁰ enforceable policies of the ACMP⁴⁹¹; the alternative measure or condition shall be described with sufficient specificity to allow the applicant to determine whether to⁴⁹²

(A) adopt the alternative;⁴⁹³

(B) abandon the project; or⁴⁹⁴

(C) file an appeal under 15 C.F.R. 930.120-132; and⁴⁹⁵

(4) if the objection is based on the failure of the applicant to supply adequate information under 6 AAC 50.425(d)(2) or 6 AAC⁴⁹⁶ 50.445(d), the nature of the information requested and an explanation regarding the necessity of having such information; ~~and~~⁴⁹⁷ ⁴⁹⁸

~~(5) a statement informing~~⁴⁹⁹ e) The coordinating agency, with⁵⁰⁰ the applicant ~~of~~⁵⁰¹ s⁵⁰² concurrence, may issue a revised proposed consistency determination if⁵⁰³ the availability⁵⁰⁴ coordinating agency is able to informally resolve an issue that has or could result in the submission⁵⁰⁵ of a request for⁵⁰⁶ elevation under 6 AAC ~~50.610.~~⁵⁰⁷ 50.600.⁵⁰⁸

(f) A proposed consistency response is not the final response for purposes of federal consistency and is subject to elevation ~~and petition~~⁵⁰⁹ under ~~to~~⁵¹⁰ 6 AAC ~~50.600-~~⁵¹¹ 680. 50.600. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145

AS 46.40.020

AS 46.40.096

AS 44.19.160
AS 44.19.161

AS 46.40.040

AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.485. FINAL CONSISTENCY RESPONSE TO A CONSISTENCY CERTIFICATION. (a) Within 50 days of receipt of the applicant's consistency certification, DGC ~~will~~⁵¹² shall⁵¹³ provide the applicant ~~and~~⁵¹⁴ the federal agency, each commenting review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c)⁵¹⁶ with a final consistency response ~~indicating whether~~⁵¹⁷ The final consistency response shall meet⁵¹⁸ the ~~state~~⁵¹⁹ requirements of 6 AAC 50.475(a)-(b) and (c) or (d) as appropriate, and include any change made between the proposed and final determination including⁵²⁰

~~(1) concurs with the applicant's consistency certification;~~⁵²¹

~~(2) objects to the applicant's~~⁵²²

(1) the adoption of any alternative measures or conditions by the applicant as part of the project description; and⁵²³

(2) any minor editorial or technical corrections.⁵²⁴

(b) The applicant's project description, as provided in 6 AAC 50.425(c), modified by the adoption of any alternative measure or condition necessary to ensure⁵²⁵ consistency ~~certification;~~⁵²⁶ ~~or~~⁵²⁶

~~(3) requests an extension for the state's response.~~⁵²⁷ with the enforceable policies of the ACMP, and described in the final consistency determination issued under (a) of this section is a legally binding description of the project. A state resource agency may enforce the adopted alternative measure or condition and the project description according to the agency's priorities, available resources, and preferred methods.⁵²⁸

~~(b)~~⁵²⁹ (c)⁵³⁰ When, following an elevation, the state continues to object to the applicant's consistency certification, DGC shall notify the applicant, the federal agency and the Director of OCRM of the objection in the final consistency response. The final response shall include

(1) a statement explaining how the proposed activity is inconsistent with specific enforceable policies; and

(2) a statement informing the applicant of a right to request appeal to the Secretary of Commerce in accordance with 15 C.F.R. 930.120-.132, as amended, that shall state "Pursuant to 15 C.F.R. 930.120-.132, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the DGC and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request."

~~(c) An objection may describe an alternative measure that, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the ACMP enforceable policies. An alternative measure shall be described with sufficient specificity to allow the applicant to determine whether to~~⁵³¹

~~(1) adopt the alternative;~~⁵³²

~~(2) abandon the project; or~~⁵³³ ~~(3) file an appeal under 15 C.F.R. 930.120-.132.~~⁵³⁴ (Eff.

____/____/200__, Register ____)

Authority: AS 44.19.145

AS 46.40.020

AS 46.40.096

AS 44.19.160
AS 44.19.161

AS 46.40.040

AS 46.40.100

Editor's Note: An applicant for a federal permit or license and the federal permit or licensing agency should refer to 15 C.F.R. 930.50-.66, as amended, for applicant and federal agency responsibilities under federal regulation.

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.490. RESOURCE AGENCY AUTHORIZATION. When ~~a~~⁵³⁵ an⁵³⁶ activity that requires a federal authorization also requires an authorization from a resource agency,

(1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process such that the federal timeline is met; and⁵³⁷

~~(2) an alternative measure necessary to ensure consistency that is identified in the final consistency response shall be included in the appropriate resource agency authorization in accordance with 6 AAC 50.275(b);~~⁵³⁸

~~(3) when there is an administrative appeal of an authorization for an activity that is part of a project, the authorizing agency may not modify an alternative measure included on the resource agency authorization;~~⁵³⁹

~~(4) when there is an administrative appeal or additional review under an agency's statutory or regulatory authority, a resource agency may modify a condition identified in the final consistency determination if the agency finds the modified condition will remain consistent with the ACMP; and~~⁵⁴⁰

~~(§~~⁵⁴¹ 2⁵⁴²) when an applicant appeals a consistency response to the Secretary of Commerce under 15 C.F.R. 930.120-.132, a resource agency shall not issue an authorization necessary for the project until the appeal is decided; a final consistency response may be amended to reflect the outcome of the appeal. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.100
AS 44.19.161 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.495. REVIEW PROCESS FOR OCS EXPLORATION, DEVELOPMENT AND PRODUCTION ACTIVITIES. (a) In accordance with 15 C.F.R. 930.70-.85, as amended, federally regulated activities described in detail in an OCS plan for exploration, or development and production from OCS leased lands, and that affect any coastal use or resource, are required to be conducted in a manner consistent with the ACMP.

(b) The consistency review for an OCS exploration, or development and production activity shall be conducted in accordance with the requirements of 15 C.F.R. 930.70-.85, as amended, and 6 AAC 50.416-.490. When a federal requirement conflicts with an ACMP requirement, the federal requirement is controlling. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

Editor's Note: An OCS plan applicant and a federal license or permit agency should refer to 15 C.F.R. 930.70-.85, as amended, for applicant and federal agency responsibilities under federal regulation.

ARTICLE 5. PUBLIC PARTICIPATION

500. Public Notice

510. Public Comments

520. Public Hearings

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.500. PUBLIC NOTICE. (a) A consistency review of a project must be public noticed.

(b) To provide sufficient public notice of a consistency review, a notice must

(1) comply with the requirements of AS 46.40.096(c);

(2) solicit comments to be addressed and submitted to the coordinating agency regarding the project's consistency with the⁵⁴³ enforceable policies of the ACMP⁵⁴⁴;

(3) specify the deadline for receipt of comments by the coordinating agency or a contact number for finding out the deadline;

(4) identify, to the extent known at the time the notice is issued, each public place at which copies of the consistency review packet and review schedule will be available for public inspection and copying, if the coordinating agency makes them available under 6 AAC 50.240(d)(4), 6 AAC 50.335(2)(D), or 6 AAC 50.435(2)(D);

(5) be

(A) published in a newspaper of general circulation within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect; or

(B) posted on an internet website dedicated to consistency review public notices;
and⁵⁴⁵

(B)⁵⁴⁶ (C)⁵⁴⁷ posted in at least one public place within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect; and

(6) be mailed to each person who has requested public notice of the project from the coordinating agency.

(c) A coordinating agency may issue a joint public notice of a consistency review with other state or federal agencies if that notice complies with the minimum requirements identified in this section. To the extent feasible, the state or federal agency and the coordinating agency will ensure that the joint public notice includes

(1) a reference to the agency's authorization; and

(2) a solicitation of comments on the agency's authorization.

(d) If a public notice of a consistency review is issued that would not comply with the minimum requirements of this section, the coordinating agency shall issue a supplemental notice that does comply. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.510. PUBLIC COMMENTS. (a) A person may comment on the consistency of a project by submitting written comments addressed directly to the coordinating agency on or before the comment deadline established under 6 AAC 50.250 or by presenting oral or written comment to the coordinating agency at a public hearing that the coordinating agency schedules and holds under 6 AAC 50.520.

(b) When a person contends that a project is inconsistent with an enforceable policy of the ACMP⁵⁴⁸, the oral or written comment must identify the enforceable policy and explain how the project is inconsistent with the policy.

(c) To be considered, comments must comply with subsections (a) and (b) of this section.

(d) The coordinating agency shall send or ensure that the applicant,⁵⁴⁹ each resource agency and any⁵⁵⁰ potentially affected coastal resource district ~~receives~~⁵⁵¹ receive⁵⁵² a copy of timely submitted comments and, if the coordinating agency holds a public hearing under 6 AAC 50.520, the summary of the comments prepared under 6 AAC 50.520(d). Upon request, the coordinating agency shall send a copy of the comments to other persons interested in the project.

(e) For a timely submitted comment, the coordinating agency may consult with the resource agency or coastal resource district with expertise or responsibility to consider the comment. ~~The resource agency or coastal resource district consulted under this subsection shall acknowledge receipt of and consider the comment, and respond to the coordinating agency.~~⁵⁵³ (Eff.

____/____/200__, Register ____)

Authority: AS 46.40.040

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.520. PUBLIC HEARINGS. (a) The coordinating agency shall schedule and hold a public hearing in an area that the coordinating agency considers a project will likely affect if the coordinating agency

(1) receives a written request for a public hearing regarding the project no later than

(A) Day 17 in a 30-day review; or

(B) Day 30 in a 50-day review; and

(2) finds that the request is based on facts or information relevant to the project's consistency with an enforceable policy that would not otherwise be available in the consistency review.

(b) Within seven days after receiving a request under (a) of this section, the coordinating agency shall

(1) decide whether to hold a public hearing; and

(2) notify the requestor if the coordinating agency will accept the request under (a) of this section.

(c) At least 15 days but no more than 30 days before the date of a public hearing scheduled under (a) of this section, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper of general circulation in the area the project is likely to affect;

(2) by written notice to the governing body of an affected coastal resource district and any authorizing resource agencies; and

(3) if the project is to be located in the unorganized borough, by radio or television broadcast to the area the project is likely to affect.

(d) If a comment at a public hearing held under this section presents a new issue or information that the review participants have not already considered, the coordinating agency shall summarize any relevant ACMP comment and distribute the summary to each review participant and the applicant within five days after the hearing. A review participant or the applicant may submit a written response to the summary provided the coordinating agency receives the response within seven days after distribution of the summary.

(e) If a resource agency or an affected coastal resource district holds a public hearing as part of its permit process under its authority or to develop its consistency review comments, the coordinating agency may consider a comment received at the hearing as part of the consistency review if

(1) the comment meets the requirements of 6 AAC 50.510(a)-(c);

- (2) the coordinating agency holds the hearing jointly with the resource agency; and
- (3) the coordinating agency receives the comment from the resource agency or the affected coastal resource district by the comment deadline established under 6 AAC 50.250.

(f) DGC may, at the request of a resource agency coordinating a public hearing under this section, assist the resource agency in implementing the public hearing requirements under this section. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096

ARTICLE 6. ELEVATION AND PETITION

- ~~600. Timing of an Elevation and Petition on a Proposed Consistency Determination or Response~~⁵⁵⁴ ~~610.~~⁵⁵⁵
Elevation Process
- ~~620. Submission of a Petition on a Proposed Consistency Determination or Response~~⁵⁵⁶
- ~~630. Acceptance or Rejection of a Petition~~⁵⁵⁷
- ~~640. Preparation for a Petition Hearing on a Proposed Consistency Determination or Response~~⁵⁵⁸
- ~~650. Council Hearing on a Proposed Consistency Determination or Response~~⁵⁵⁹
- ~~660.~~⁵⁶⁰ ~~610.~~⁵⁶¹ Petition on Program Implementation; Process on the Petition
- ~~670.~~⁵⁶² ~~620.~~⁵⁶³ General Hearing Procedures on Petitions
- ~~680.~~⁵⁶⁴ ~~630.~~⁵⁶⁵ Citizen of an Affected Coastal Resource District

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.600. ~~TIMING OF AN ELEVATION AND PETITION ON A PROPOSED CONSISTENCY DETERMINATION OR RESPONSE.~~ (a) ~~An elevation of a proposed consistency finding to the resource agency directors will be conducted prior to a petition hearing on the proposed determination.~~⁵⁶⁶

(b) ~~An elevation of a director level proposed consistency finding to the resource agency commissioners will be conducted after a petition hearing and decision by the council.~~⁵⁶⁷

(c) ~~A final consistency determination or response is not subject to review by petition to the council.~~ (Eff. ____/____/200__, Register ____)⁵⁶⁸

Authority: ~~AS 44.19.160~~ ~~AS 46.40.040~~ ~~AS 46.40.100~~⁵⁶⁹
~~AS 46.40.020~~ ~~AS 46.40.096~~⁵⁷⁰

~~6 AAC 50 is amended by adding a new section to read:~~⁵⁷¹ **6 AAC 50.610.**⁵⁷² **ELEVATION PROCESS.** (a) When a resource agency, project applicant, or affected coastal resource district does not concur with the proposed consistency determination or response, it may request an elevation of the proposed consistency determination or response ~~by~~⁵⁷³ to⁵⁷⁴ the resource agency directors.

(b) At the request of a resource agency, project applicant, or affected coastal resource district, the coordinating agency may proceed directly to a commissioner-level elevation under subsections (j) – (l) of this section.⁵⁷⁵

~~(b)~~⁵⁷⁶ c⁵⁷⁷ An elevation is limited to consideration of

(1) the proposed consistency determination or response regarding whether the project is consistent with the enforceable policies of the ACMP⁵⁷⁸; or

(2) any alternative measure identified as necessary ~~solely~~⁵⁷⁹ to ensure consistency with the enforceable policies of the ACMP.

~~(e)~~⁵⁸⁰ d⁵⁸¹ A request for elevation

- (1) must be in writing;
- (2) must be received by the coordinating agency within five days after the requestor receives the proposed consistency determination or response; and
- (3) must explain the requestor's concern, including any addition of or⁵⁸² modification to an alternative measure identified as necessary to ensure the project is consistent with the enforceable policies of the ACMP, ~~or any additional alternative measure necessary to ensure consistency~~⁵⁸³.

(~~d~~⁵⁸⁴ e⁵⁸⁵) Upon receipt of a request for elevation in accordance with (a).(⁵⁸⁶ c) and (d)⁵⁸⁷ of this section, the coordinating agency shall

- (1) distribute the request for elevation to each review participant, the applicant, and each person who submitted timely comments;
- (2) suspend the review schedule by fifteen days; and
- (3) arrange and facilitate a meeting among the requestor and at least one director or their delegate from each resource agency.

(~~e~~⁵⁸⁸ f⁵⁸⁹) The coordinating agency shall invite the applicant and any affected coastal resource district, and may invite another affected party to participate in the meeting arranged under (~~d~~⁵⁹⁰ e⁵⁹¹) of this section.

(~~f~~⁵⁹² g⁵⁹³) Only resource agency directors or their delegates may make a final decision on the elevation.

(~~g~~⁵⁹⁴ h⁵⁹⁵) Within the fifteen days identified in (~~d~~⁵⁹⁶ e⁵⁹⁷)(2) of this section, the coordinating agency shall

- (1) attempt to resolve the disputed issue given the policy direction provided by the participating directors or their delegates of the resource agencies;
- (2) prepare a director-level proposed consistency determination or response that reflects the participating directors or their delegates of the resource agencies' decision; and
- (3) distribute the determination or response to each review participant, the applicant, and each person who submitted timely comments.

(~~h~~⁵⁹⁸ i⁵⁹⁹) When a resource agency, project applicant, or affected coastal resource district does not concur with the director-level proposed consistency determination or response distributed under (~~g~~⁶⁰⁰ h)(3⁶⁰¹) of this section, it may request an elevation of the director-level proposed consistency determination or response by the resource agency commissioners.

(~~i~~⁶⁰² j⁶⁰³) An elevation ~~of the director-level proposed consistency determination or response~~⁶⁰⁴ to the resource agency commissioners received under (b) or (i) of this section⁶⁰⁵ shall follow the same format and requirements as (~~a~~⁶⁰⁶ c⁶⁰⁷) through (~~g~~⁶⁰⁸ h⁶⁰⁹) of this section.

(~~j~~⁶¹⁰ k⁶¹¹) Only resource agency commissioners or their delegates may make a final decision.

(~~k~~⁶¹² l⁶¹³) Following resolution of the disputed issue, the coordinating agency shall, within fifteen days of receipt of the request for elevation under (~~h~~⁶¹⁴ b) or (i)⁶¹⁵ of this section,

- (1) prepare a final consistency determination or response that reflects the participating resource agency commissioners' or their delegates decision and that is consistent with any policy direction given by the commissioners of the resource agencies or the governor; and
- (2) distribute the final determination or response to each review participant, the applicant, and each person who submitted timely comments.

(~~i~~⁶¹⁶ m⁶¹⁷) In this section, "consistent" means consistent to the maximum extent practicable for a federal activity subject consistency review. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

~~6 AAC 50 is amended by adding a new section to read:~~⁶¹⁸

~~**6 AAC 50.620. SUBMISSION OF A PETITION ON A PROPOSED CONSISTENCY DETERMINATION OR RESPONSE.** (a) A citizen of an affected coastal resource district that submitted timely comments under 6 AAC 50.510(a) (c) regarding a project's consistency with an affected coastal resource district enforceable policy may file a petition to the council on a proposed consistency determination or response.~~⁶¹⁹

~~(b) A citizen of an affected coastal resource district, an affected coastal resource district, a state agency or an applicant that timely submitted comments in accordance with 6 AAC 50.510(a) (c) regarding a project's consistency with an affected coastal resource district enforceable policy may file a petition to the council on a director level proposed consistency determination or response.~~⁶²⁰

~~(c) The petitioner shall submit a notice of petition to the coordinating agency within five days after distribution of a proposed consistency determination or response or director level proposed consistency determination or response.~~⁶²¹

~~(d) A notice of petition must~~⁶²²

~~(1) include the petitioner's name, mailing address, street address, and any telephone number and facsimile number at which the petitioner may be reached during the day;~~⁶²³

~~(2) specify whether the petitioner is an affected coastal resource district, a state agency, an applicant, or a citizen of an affected coastal resource district,;~~⁶²⁴

~~(3) include an item listed in 6 AAC 50.680(b) when the petitioner asserts he or she is a citizen of an affected coastal resource district; and~~⁶²⁵

~~(4) identify each enforceable policy of the affected coastal resource district's approved program on which the petitioner submitted timely comments under 6 AAC 50.510(a) (c) that the petitioner believes the coordinating agency did not fairly consider.~~⁶²⁶

~~(e) When a petition hearing is delayed for purposes of conducting a elevation of the proposed determination, a petitioner under (a) of this section shall submit to the coordinating agency a notice of intent to continue pursuing the petition within five days after distribution of a director level proposed consistency determination or response.~~⁶²⁷

~~(f) When a petition is accepted under 6 AAC 50.630, the petitioner shall file a petition document with the coordinating agency and DGC, if other than the coordinating agency, within 20 days after distribution of the proposed consistency determination or response or a director level proposed consistency determination or response.~~⁶²⁸

~~(g) A petition document~~⁶²⁹

~~(1) must describe how the petitioner believes his or her comment regarding the project's consistency with an affected coastal resource district's enforceable policy was not fairly considered by the coordinating agency in the development of the proposed consistency finding;~~⁶³⁰

~~(2) may present a brief written argument in support of the petition;~~⁶³¹

~~(3) may not discuss an enforceable policy that the petitioner did not identify in the notice of petition, or introduce new information regarding the consistency of the project with an affected coastal resource district's enforceable policies. (Eff. ____/____/200__, Register ____)~~⁶³²

~~Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100~~⁶³³

~~6 AAC 50 is amended by adding a new section to read:~~⁶³⁴

~~**6 AAC 50.630. ACCEPTANCE OR REJECTION OF A PETITION.** (a) Within five days after receiving a notice of petition, notice of intent, or a petition document, the coordinating agency shall inform the petitioner whether the petition is accepted.~~⁶³⁵

~~(b) The coordinating agency shall reject a notice of petition when~~⁶³⁶

~~(1) the petitioner did not submit~~⁶³⁷

~~(A) a timely comment in accordance with the requirements in 6 AAC 50.510(a)-~~

~~(e);~~⁶³⁸

~~(B) a timely comment that describes how the proposed project is inconsistent with an affected coastal resource district enforceable policy; or~~⁶³⁹

~~(C) a timely notice of petition; or~~⁶⁴⁰

~~(2) the petitioner is not~~⁶⁴¹

~~(A) a citizen of an affected coastal resource district;~~⁶⁴²

~~(B) an affected coastal resource district;~~⁶⁴³

~~(C) a state agency; or~~⁶⁴⁴

~~(D) the applicant.~~⁶⁴⁵

~~(c) When a notice of petition or notice of intent is accepted, within one day after acceptance, a coordinating agency~~⁶⁴⁶

~~(1) other than DGC shall provide DGC with a copy of the proposed consistency determination and notice of petition; and~~⁶⁴⁷

~~(2) shall provide the applicant with a copy of the notice of petition.~~⁶⁴⁸

~~(d) DGC staff to the council shall reject a petition when the petition document~~⁶⁴⁹

~~(1) is not timely submitted;~~⁶⁵⁰

~~(2) does not explain how the petitioner believes his or her comment regarding an affected coastal resource district's enforceable policy was not fairly considered by the coordinating agency in the development of the proposed consistency finding; or~~⁶⁵¹

~~(3) seeks review of~~⁶⁵²

~~(A) the substantive merits of a proposed consistency determination or response;~~⁶⁵³

~~(B) a final consistency determination or response; or~~⁶⁵⁴

~~(C) the coordinating agency's treatment of a comment~~⁶⁵⁵

~~(i) that a petitioner did not submit by the deadline established under 6 AAC 50.250, 6 AAC 50.355, or 6 AAC 50.455;~~⁶⁵⁶

~~(ii) from a petitioner who is not eligible to file a petition on a proposed consistency determination or response; or~~⁶⁵⁷

~~(iii) that does not address an enforceable policy of an approved program for an affected coastal resource district.~~⁶⁵⁸

~~(e) When a petition document is accepted, within three days of receiving the petition document, the coordinating agency shall provide a copy of the document to the applicant. (Eff. ____/____/200__, Register ____)~~⁶⁵⁹

Authority: _____ AS 44.19.162 _____ AS 46.40.096 _____ AS 46.40.100⁶⁶⁰
_____ AS 46.40.040⁶⁶¹

~~6 AAC 50 is amended by adding a new section to read:~~⁶⁶²

~~**6 AAC 50.640. PREPARATION FOR A PETITION HEARING ON A PROPOSED CONSISTENCY DETERMINATION OR RESPONSE.** (a) When a petition is accepted, a coordinating agency shall, within 10 days after receiving the petition document-~~⁶⁶³

~~(1) prepare an evaluation that identifies or explains the steps the coordinating agency took to fairly consider the petitioner's comments;~~⁶⁶⁴

~~(2) provide the petitioner, the applicant, any affected coastal resource district, and DGC staff to the council a copy of the evaluation prepared under (1) of this subsection; and~~⁶⁶⁵

~~(3) provide DGC staff to the council with~~⁶⁶⁶

~~(A) the analysis or documentation the coordinating agency developed in conjunction with the consistency review; and~~⁶⁶⁷

~~(B) documentation that a copy of the evaluation was sent to the petitioner and the applicant.~~⁶⁶⁸

~~(b) An applicant may submit to DGC staff to the council a response to the petition document within 10 days after the coordinating agency distributes the petition document.~~⁶⁶⁹

~~(c) Within 10 days after DGC staff to the council receives the information in (a) and (b) of this section, DGC staff to the council shall~~⁶⁷⁰

~~(1) prepare for consideration by the council a written recommendation regarding the decision on the petition; and~~⁶⁷¹

~~(2) provide the petitioner, the applicant, and the council with a copy of the recommendation prepared under (1) of this subsection. (Eff. ____/____/200__, Register ____)~~⁶⁷²

~~Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100~~⁶⁷³

~~6 AAC 50 is amended by adding a new section to read:~~⁶⁷⁴

~~**6 AAC 50.650. COUNCIL HEARING ON A PROPOSED CONSISTENCY DETERMINATION OR RESPONSE.** (a) Within 30 days after a petition document is accepted, unless a shorter time is set under (e) of this section, the council shall consider the petition at a hearing held in accordance with this section.~~⁶⁷⁵

~~(b) Council review of a petition on a proposed consistency determination or response is limited to consideration of whether the coordinating agency fairly considered a comment that~~⁶⁷⁶

~~(1) the petitioner timely submitted in accordance with 6 AAC 50.510(a) (c); and~~⁶⁷⁷

~~(2) identified an enforceable policy of an approved management program for an affected coastal resource district and explained how the project would be inconsistent with the policy.~~⁶⁷⁸

~~(c) In determining whether a coordinating agency fairly considered a petitioner's comment, the council will rely on material in the administrative record, including~~⁶⁷⁹

~~(1) documentation demonstrating how the coordinating agency responded to the petitioner's comment, or showing that the coordinating agency referred the comment to another state or federal agency for review and demonstrating how that agency responded to the petitioner's comment; and~~⁶⁸⁰

~~(2) development, by the coordinating agency or another state agency as part of the proposed consistency determination or response, of an alternative measure to address the concern the petitioner's comment raised.~~⁶⁸¹

~~(d) Except as provided in (e) of this section, the council will issue a decision on the petition within 30 days after a petition is filed under 6 AAC 50.620 and after a hearing under (a) of this section. The council will, in its discretion, adopt as its decision the recommendations prepared by DGC staff to the council under 6 AAC 50.640. If the council~~⁶⁸²

~~(1) remands the proposed consistency determination or response, the coordinating agency shall~~⁶⁸³

~~(A) render and distribute a revised proposed consistency determination or response to each review participant, the applicant, and the petitioner within 15 days after the council decision; and~~⁶⁸⁴

~~(B) render the final consistency determination or response five days after distributing the revised proposed consistency determination or response, unless the coordinating agency receives a timely request for elevation of the revised determination to the resource agency commissioners;~~⁶⁸⁵

~~(2) dismisses the petition, the coordinating agency shall render the final consistency determination or response within five days after the dismissal and distribute the final determination to each review participant, each person who submitted comments under 6 AAC 50.510, and each person listed in 6 AAC 50.265(b), unless the coordinating agency receives a timely request for elevation of a director level proposed determination to the resource agency commissioners.~~⁶⁸⁶

~~(e) If the consistency response under 6 AAC 50.305-.395 or 6 AAC 50.405-495 is due before the expiration of the 30-day period for the council to decide a petition on a proposed consistency determination or response, DGC may shorten as necessary~~⁶⁸⁷

~~(1) the time period between public notice of a hearing on the petition and the hearing;~~⁶⁸⁸

~~(2) the time available for council review of a petition.~~⁶⁸⁹

~~(f) The council's decision under (d) of this section is a final administrative order and decision when the final consistency determination or response is rendered in accordance with 6 AAC 50.265.~~⁶⁹⁰

~~(g) Nothing in this chapter requires a person to file a petition on a proposed consistency determination or response to pursue other legal remedies as permitted by law. (Eff. ____/____/200__, Register ____)~~⁶⁹¹

Authority: _____ AS 44.19.145 _____ AS 46.40.096 _____ AS 46.40.100⁶⁹²
_____ AS 46.40.040⁶⁹³

~~6 AAC 50 is amended by adding a new section to read:~~⁶⁹⁴

~~6 AAC 50 is amended by adding a new section to read:~~⁶⁹⁵

~~**6 AAC 50.660.**~~⁶⁹⁶ ~~**6 AAC 50.610.**~~⁶⁹⁷ **PETITION ON PROGRAM IMPLEMENTATION; PROCESS ON THE PETITION.** (a) A coastal resource district, a citizen of the coastal resource district, or a state resource agency may file a⁶⁹⁸ petition ~~on~~⁶⁹⁹ to the council showing that a district coastal management⁷⁰⁰ program ~~implementation~~⁷⁰¹ is not being implemented. A petitioner may not challenge a proposed or final consistency determination or response rendered under AS 46.40.096 and this chapter.⁷⁰²

(b) A petition⁷⁰³ must be submitted in writing to DGC. The petition must

(1) give⁷⁰⁴ include⁷⁰⁵ the petitioner's name, mailing address, the street address, and a telephone number, and any facsimile number, at which the petitioner may be reached;

(2) specify whether the petitioner is a coastal resource district, a citizen of the coastal resource district, or a state resource agency;⁷⁰⁶

(3) include an item listed in 6 AAC 50.630(b) when the petitioner asserts he or she is a citizen of the coastal resource district;⁷⁰⁷

(2)⁷⁰⁸ 4⁷⁰⁹ include a list of points that the person intends to argue in the petition;

(3)⁷¹⁰ 5⁷¹¹ explain how the approved program of the coastal resource⁷¹² district is not being implemented, ~~enforced, or complied with~~⁷¹³; and

(4⁷¹⁴ 6⁷¹⁵) suggest an alternative action that will implement, ~~enforce, or comply with~~⁷¹⁶ the approved program of the coastal resource⁷¹⁷ district.

~~(b) In a petition on program implementation, a petitioner may not challenge a proposed or final consistency determination or response rendered under AS 46.40.096, AS 46.40.100 (b)(1), and this chapter.~~⁷¹⁸

~~(c) For a petition on a program implementation,~~⁷¹⁹ ~~DGC staff to the council~~⁷²⁰ shall prepare and submit to the council,⁷²¹ and any affected coastal resource district,⁷²² draft written findings and a draft written decision. The council will, in its discretion, adopt as its findings and decision the draft findings and decision from DGC. The Council may order that the coastal resource district or state resource agency take any action with respect to future implementation of the district's coastal management program.⁷²³

(d) Within five days after the decision by the council, DGC ~~staff to the council~~⁷²⁴ shall distribute the decision to the petitioner, any affected coastal resource district, and each state agency and person whom DGC identifies as having an interest in the petition.

(e) The effective date of a council decision is the date DGC distributes the decision. As of the date of distribution, the council decision is a final administrative decision under the ACMP. (Eff. ___/___/200__, Register ___)

Authority: AS 46.40.096 AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC ~~50.670.~~⁷²⁵ 50.620.⁷²⁶ GENERAL HEARING PROCEDURES ON PETITIONS.

(a) For ~~petitions~~⁷²⁷ a petition⁷²⁸ filed under 6 AAC ~~50.620 or 6 AAC 50.660,~~⁷²⁹ 50.610,⁷³⁰ the council will conduct a petition hearing. A petition hearing may be conducted by teleconference.

(b) The council will, in its discretion, conduct a petition hearing by establishing a quorum of council members to conduct the hearing and make a decision. ~~If more than one petition is filed regarding the same proposed consistency determination or response, the council will, in its discretion, review the petitions at the same hearing.~~⁷³¹ If a quorum cannot be established before the hearing date, the council will, in its discretion, assign at least one council member to preside over the hearing and establish a quorum of council members at a later date to make a decision. Before making a decision at a later date, participating council members who did not attend the hearing must review the tape or transcript of the hearing and

~~(1) the relevant portions of the administrative record for a petition on a proposed consistency determination or response; or~~⁷³² ~~(2)~~⁷³³ the documentary evidence presented at the hearing, for a petition on program implementation.

~~(c) For a petition on a proposed consistency determination or response,~~⁷³⁴

~~(1) DGC staff to the council shall briefly summarize the issues presented to the council for review;~~⁷³⁵

~~(2) the petitioner, the applicant, the affected coastal resource district, and the coordinating agency may present a brief oral argument or testimony;~~⁷³⁶

~~(3) DGC staff to the council shall present DGC's recommendation prepared under 6 AAC 50.640 for council consideration; and~~⁷³⁷

~~(4) the burden of proof is on the petitioner.~~⁷³⁸

~~(d)~~⁷³⁹ c⁷⁴⁰ The council will convene a hearing to consider a petition on program implementation during the next scheduled council meeting or within 60 days, unless all parties to the hearing agree to a reasonable time extension. In a hearing held on a petition on program implementation

(1) the burden of proof is on the petitioner;

(2) the council will allow admission of material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs; and

(3) formal rules of evidence need not apply. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.100
AS 44.19.161 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC ~~50.680~~⁷⁴¹ 50.630⁷⁴² CITIZEN OF AN AFFECTED COASTAL RESOURCE DISTRICT. (a) For purposes of AS 46.40 and this chapter, a citizen of an affected coastal resource district is a natural person who has been residing in the affected coastal resource district for a minimum of 30 days with the intent to remain in the district indefinitely.

(b) A petitioner under 6 AAC ~~50.620~~⁷⁴³ 50.610⁷⁴⁴ (a) ~~or (b)~~⁷⁴⁵ shall submit⁷⁴⁶ with the ~~notice~~⁷⁴⁷ ~~of~~⁷⁴⁷ petition filed under 6 AAC ~~50.620~~⁷⁴⁸ 50.610⁷⁴⁹ (~~e~~⁷⁵⁰ b⁷⁵¹), at least one of the following items to demonstrate that the petitioner meets the criteria under (a) of this section:

- (1) a copy of the petitioner's voter registration;
- (2) a copy of the petitioner's driver's license;
- (3) a copy of the petitioner's motor vehicle registration;
- (4) a statement identifying where the petitioner maintains the petitioner's principal place of abode.

(c) The coordinating agency or the council may request additional information it considers necessary to aid the agency or council's determination regarding whether a petitioner meets the criteria under (a) of this section. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100

ARTICLE 7. GENERAL AND NATIONWIDE PERMITS, CATEGORICALLY CONSISTENT DETERMINATIONS, GENERAL CONSISTENCY DETERMINATIONS, AND GENERAL CONSISTENCY CONCURRENCES

- 700. Use of General and Nationwide Permits, Categorically Consistent Determinations, General Consistency Determinations, and General Concurrences in Project Consistency Reviews**
- 710. Review Process for Categorically Consistent Determinations for Activities that Require a Resource Agency Authorization**
- 720. Implementation of Categorically Consistent Determinations for Activities that Require a Resource Agency Authorization**
- 730. Review Process for General Consistency Determinations for Activities that Require a Resource Agency Authorization**
- 740. Implementation of General Consistency Determinations for Activities that Require a Resource Agency Authorization**
- 750. Activities Generally Subject to Individual Consistency Review**
- 760. Review Process for State Resource Agency General Permits**
- 770. Review Process for a Federal General Permit and Nationwide Permit**
- 780. General Consistency Determinations for Federal Activities**
- 790. General Concurrences for Federally Regulated Activities**

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.700. USE OF GENERAL AND NATIONWIDE PERMITS, CATEGORICALLY CONSISTENT DETERMINATIONS, GENERAL CONSISTENCY DETERMINATIONS, AND GENERAL CONCURRENCES IN PROJECT CONSISTENCY REVIEWS. (a) When an activity that is part of a project is authorized by a

general or nationwide permit that was previously evaluated and found consistent with the enforceable policies of the⁷⁵² ACMP, the activity subject to the general or nationwide permit and completely ~~describer~~⁷⁵³ described⁷⁵⁴ therein is consistent based on implementation of the general or nationwide permit. The scope of the project subject to review shall exclude the activity authorized by the general or nationwide permit.

(b) When all activities of a project are subject to a categorical or general consistency determination or general concurrence under this article, the project is not subject to further consistency review.⁷⁵⁵

~~(b) When a project includes both an activity that requires an individual consistency review and~~⁷⁵⁶ (c) When⁷⁵⁷ an activity that is part of a project⁷⁵⁸ is subject to a categorical or general consistency determination or general concurrence under this article and the project includes an activity that requires an individual consistency review⁷⁵⁹, all activities shall be included in the scope of a project subject to review except as permitted under (d) of this section.

~~(c) When all activities of a project are subject to a categorical or general consistency determination or general concurrence under this article, the project is not subject to further consistency review.~~⁷⁶⁰

(d) When a project includes an activity that is subject to a categorical or general consistency determination or general concurrence under this article, the coordinating agency, with the concurrence of the resource agencies and affected coastal resource district, may exclude the activity from the scope of the project subject to a consistency review when the impact of the activity, when in compliance with the categorical or general consistency determination or general concurrence, has a temporary and de minimis impact to coastal uses and resources. An activity excluded from a consistency review may be authorized at the discretion of an authorizing resource agency subject to the standard alternative measures in the general consistency determination or general concurrence.

(e) DGC shall develop and maintain a list of general and nationwide permits, categorically consistent determinations, general consistency determinations, and general concurrences. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.710. REVIEW PROCESS FOR CATEGORICALLY CONSISTENT DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION.

(a) DGC may issue a categorically consistent determination for an activity that requires a resource agency authorization and that has de minimis impact on coastal uses and resources.

(b) DGC shall develop and maintain a list of categorically consistent determinations (the "A" list).

(c) A categorically consistent determination shall

- (1) identify the authorization required for the activity; and
- (2) specifically describe the activity subject to the determination.

(d) DGC will amend the A list on its own initiative or at the request of a resource agency or coastal resource district, based on new information regarding the impacts of a listed activity, including cumulative impacts of the activity on coastal uses or resources.

(e) When a new categorically consistent determination, amendment to an existing determination, or amendment of the A list is proposed, DGC shall

(1) distribute the proposed categorically consistent determination or amended list to review participants;

(2) public notice the proposed categorically consistent determination or amended list in accordance with 6 AAC 50.500; and

(3) review the A list amendment under sections 6 AAC 50.235-270.

(f) DGC shall include an activity on the A list when the activity is found consistent under (e)(3) of this section and the activity has de minimis impact on coastal uses and resources. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.720. IMPLEMENTATION OF CATEGORICALLY CONSISTENT DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION. (a) An applicant for an activity on the A list shall submit a completed CPQ to the authorizing agency unless the categorically consistent determination specifically states a CPQ is not needed.

(b) The authorizing resource agency shall review the authorization application and CPQ.

(c) An activity that meets the description in the categorically consistent determination is not subject to further consistency review, unless the CPQ indicates an authorization is needed for an activity that is part of the project, and the additional activity is not on the A or B list. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.730. REVIEW PROCESS FOR GENERAL CONSISTENCY DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION. (a) DGC may issue a general consistency determination for an activity that requires a resource agency authorization and that can be made consistent with the ACMP through application of standard alternative measures.

(b) DGC shall develop and maintain a list of general consistency determinations (the "B" list).

(c) A general consistency determination must

(1) identify the authorization required for the activity;

(2) specifically describe the activity subject to the determination; and

(3) describe the standard alternative measures necessary to ensure the activity is consistent with the ACMP.

(d) DGC will amend the B list on its own initiative or at the request of a resource agency or coastal resource district, based on new information regarding the impacts of a listed activity, including cumulative impacts of the activity on coastal uses or resources.

(e) When a new general consistency determination, amendment to an existing determination, or amendment of the B list is proposed, DGC shall

(1) distribute the proposed general consistency determination or amended list to review participants;

(2) public notice the proposed general consistency determination or amended list in accordance with 6 AAC 50.500; and

(3) review the B list amendment under sections 6 AAC 50.235-270.

(f) DGC shall include an activity on the B list

(1) when the activity is found consistent under (e)(3) of this section; and

(2) based on development of standard alternative measures necessary to ensure the project is consistent with enforceable policies. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161

AS 46.40.040

AS 46.40.096

AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.740. IMPLEMENTATION OF GENERAL CONSISTENCY DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION.

(a) An applicant for an activity on the B list shall submit a completed CPQ to the authorizing resource agency unless a general consistency determination specifically states a CPQ is not needed.

(b) The authorizing resource agency shall review the authorizing application and CPQ.

(c) An activity that meets the description in the general consistency determination is not subject to further consistency review, unless the CPQ indicates an authorization is needed for an activity that is part of the project, and the additional activity is not on the A or B list.

(d) An authorization ~~issued~~⁷⁶¹ for an activity that is consistent based on a general consistency determination ~~must include the standard~~⁷⁶² shall only be issued once the applicant adopts the alternative⁷⁶³ measures identified in ~~the~~⁷⁶⁴ general consistency⁷⁶⁵ determination as necessary to ensure the activity is consistent with the ACMP. The applicant shall submit to the coordinating agency, in writing, a statement adopting the alternative measures as part of the project description⁷⁶⁶. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161

AS 46.40.040

AS 46.40.096

AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.750. ACTIVITIES GENERALLY SUBJECT TO INDIVIDUAL CONSISTENCY REVIEW.

(a) DGC, in consultation with the resource agencies and affected coastal resource districts, shall develop and maintain a list of authorizations that authorize⁷⁶⁷ activities that may have a⁷⁶⁸ reasonably foreseeable direct or indirect effect on ~~any~~⁷⁶⁹ a⁷⁷⁰ coastal ~~uses~~⁷⁷¹ use⁷⁷² or ~~resources that require a~~⁷⁷³ resource ~~agency authorization~~⁷⁷⁴ (the "C" list).

(b) An activity that requires an authorization that is on the C list and that meets the requirements of 6 AAC 50.005(a)(2)⁷⁷⁵ shall be subject to an individual consistency review in accordance with the procedures in this chapter, except as provided for in 6 AAC 50.700.

(c) An activity requiring a resource agency authorization that is not identified on the C list shall not be⁷⁷⁶ subject to an individual⁷⁷⁷ consistency review. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.760. REVIEW PROCESS FOR RESOURCE AGENCY GENERAL PERMITS.

(a) A resource agency that develops a general permit under its statutory or regulatory authority shall subject the general permit to a consistency review in accordance with the procedures identified in (b) of this section if the activities covered under the general permit may have a reasonably foreseeable direct or indirect effect on ~~any~~⁷⁷⁸ a⁷⁷⁹ coastal ~~uses~~⁷⁸⁰ use⁷⁸¹ or ~~resources~~⁷⁸² resource⁷⁸³.

(b) When a new resource agency general permit or amendment to an existing resource agency general permit is proposed, the resource agency shall

- (1) distribute the proposed general permit to the review participants and DGC;
- (2) public notice the proposed general permit in accordance with 6 AAC 50.500; and
- (3) review the proposed general permit under ~~section~~⁷⁸⁴ 6 AAC 50.235-270.

(c) The resource agency shall provide DGC with a copy of the final approved general permit. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.770. REVIEW PROCESS FOR A FEDERAL GENERAL PERMIT AND NATIONWIDE PERMIT. A federal general permit or nationwide permit shall be reviewed for consistency in accordance with 6 AAC 50.305-.395. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.780. GENERAL CONSISTENCY DETERMINATIONS FOR FEDERAL ACTIVITIES. (a) In accordance with 15 C.F.R. 930.36(c), a federal agency may provide DGC with a general consistency determination for

(1) repetitive activities that do not affect any coastal use or resource when performed separately; and

(2) de minimis activities as described under 15 C.F.R. 930.33(a)(3).

(b) A general consistency determination for a repetitive or de minimis federal activity shall be submitted and reviewed in the same manner as a federal activity under 6 AAC 50.305-.395.

(c) When the state concurs with a general consistency determination for a repetitive or de minimis activity, the activity shall not be subject to further consistency review.

(d) DGC shall develop and maintain a list of general consistency determinations for repetitive and de minimis federal activities. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.790. GENERAL CONCURRENCES FOR ACTIVITIES REQUIRING A FEDERAL AUTHORIZATION. (a) In accordance with 15 C.F.R. 930.53(b), DGC may issue a general concurrence for minor activities requiring a federal authorization.

(b) An activity that is consistent based on a general concurrence for a minor activity requiring a federal license or permit shall not be subject to further consistency review.

(c) DGC shall develop and maintain a list of general concurrences for activities requiring a federal authorization. This list shall include the minor federal authorization activities and the relevant alternative measures which are covered by the general concurrence. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.096

ARTICLE 8. PROJECT MODIFICATIONS AND RENEWALS OF AUTHORIZATIONS

800. Project Modifications During a Consistency Review

810. Project Modifications After Issuance of a Final Consistency Determination

820. Authorization Renewals

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.800. PROJECT MODIFICATIONS DURING A CONSISTENCY REVIEW.

A coordinating agency may terminate a consistency review if, after initiation of the consistency review,

(1) information is received by the coordinating agency that indicates an additional authorization ~~identified under 6 AAC 50.750~~⁷⁸⁵ subject to the consistency review⁷⁸⁶ is required; or

(2) the ~~description~~⁷⁸⁷ scope⁷⁸⁸ of the project is substantially modified by the applicant. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.810. PROJECT MODIFICATIONS AFTER ISSUANCE OF A FINAL CONSISTENCY DETERMINATION. (a) An applicant that proposes a modification to an activity that is part of a project for which a final consistency determination or response has been issued shall submit a new CPQ that includes a detailed description of the proposed modification. The CPQ for the proposed modification must be submitted to the agency that coordinated the consistency review of the project.

(b) A modification that is proposed to a project for which a final consistency determination or response has been issued shall be subject to a consistency review when the proposed modification may cause additional impacts to a⁷⁸⁹ coastal ~~uses~~⁷⁹⁰ use⁷⁹¹ or ~~resources~~⁷⁹² resource⁷⁹³ and

(1) a new resource agency authorization ~~included on the C List under 6 AAC 50.750~~⁷⁹⁴ subject to the consistency review process⁷⁹⁵ or a new federal authorization under 6 AAC 50.405 is required; or

(2) a change to an existing resource agency or federal authorization is required.

(c) Only the part of the project affected by a proposed modification is subject to a consistency review. Alternative measures developed during the consistency review of a proposed modification must address only the impacts caused by the modification.

(d) Except as provided in (e) of this section, the resource agency that is issuing a new authorization, or whose authorization requires modification, will conduct the consistency review for the proposed project.

(e) DGC shall coordinate the consistency review for a proposed modification

(1) when the modification requires a new or amended federal authorization;

(2) when a modification requires a new authorization from two or more resource agencies;

(3) when a change to an existing authorization from two or more resource agencies is required;

(4) when more than one modification is proposed at the same time and the combined proposed modifications require authorization action from two or more resource agencies;

(5) the resource agency whose authorization requires modification requests that DGC coordinate the review, provided DGC agrees; or

(6) except when DGC and an resource agency whose authorization requires modification agree that that agency will coordinate the review.

(f) The coordinating agency shall distribute the CPQ for the proposed modification to the review participants. Each review participant shall respond to the coordinating agency within ~~5~~⁷⁹⁶7⁷⁹⁷ days after the CPQ is distributed and determine whether

- (1) a new authorization or change to an existing authorization is required; and
- (2) the proposed modification may cause additional impacts to a⁷⁹⁸ coastal ~~uses~~⁷⁹⁹ use⁸⁰⁰ or ~~resources~~⁸⁰¹ resource⁸⁰².

(g) If, in accordance with (f) of this section, the coordinating agency determines that the proposed modification will not cause additional impacts to coastal uses and resources, no further action is necessary under this chapter. The appropriate resource agency or federal agency will process the proposed modification as required under the agency's statutory and regulatory authority.

(h) If, in accordance with (f) of this section, the coordinating agency determines that the proposed modification may cause an⁸⁰³ additional impacts to a⁸⁰⁴ coastal ~~uses~~⁸⁰⁵ use⁸⁰⁶ or ~~resources~~⁸⁰⁷ resource⁸⁰⁸, the coordinating agency shall initiate a consistency review for the proposed modification under the appropriate consistency review process described under 6 AAC 50.005.

(i) The following modifications, that have no additional effect on coastal uses and resources, are not subject to further consistency review:

- (1) change in ownership;
- (2) change in contractor or subcontractor;
- (3) decrease in the scope of the project with no change of purpose;
- (4) authorization modifications that are within the scope of the original project that was reviewed;
- (5) authorization modifications that are allowed under the original authorization conditions;
- (6) authorization modifications that are meant to clarify requirements in the previously issued authorization.

(j) A modification to a federal activity shall be addressed under 15 C.F.R. 930.45 and .46. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.040
	AS 44.19.160	AS 46.40.020	AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.820. AUTHORIZATION RENEWALS, RE-ISSUANCES, AND

EXPIRATIONS. (a) When an authorization for an existing project is subject to renewal, re-issuance, or the authorization has expired and the applicant does not propose a modification to the project, no further action under this chapter is necessary.

(b) When an authorization for an existing project is subject to renewal, re-issuance, or the authorization has expired and the applicant proposes a modification to the existing project, the proposed modification shall be subject to the provisions of 6 AAC 50.810. (Eff. ____/____/200__, Register ____)

Authority:	AS 46.40.040	AS 46.40.096
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ARTICLE 9. GENERAL PROVISIONS

920. Emergency Expedited Review and Waiver of Review.

925. Repealed
950. Computation of Time
990. Definitions.

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.920. EMERGENCY EXPEDITED REVIEW AND WAIVER OF REVIEW.

(a) When an applicant needs an expedited consistency review or waiver of consistency review due to an emergency as described in AS 26.23 or AS 46.04.080, other applicable law, or when the coordinating agency finds that an expedited or waiver of review is necessary for the preservation of the public peace, health, safety, or general welfare, the coordinating agency, in consultation with the resource agencies and any affected coastal resource district, may expedite or waive the review process established in this chapter as necessary to meet the emergency. The decision to expedite or waive the review shall be based upon clear and convincing evidence of a need to expedite or waive the review.

(b) When an expedited review is determined necessary in accordance with (a) of this section, the coordinating agency shall document the decision in writing. The coordinating agency shall expedite the consistency review process as necessary to meet the emergency and, as soon as practicable, shall issue a final consistency determination in accordance with 6 AAC 50.265, that describes the expedited review process.

(c) When a waiver of review is necessary in accordance with (a) of this section, the coordinating agency shall document the decision in writing as soon as practicable. The document will serve as the final consistency determination and shall be distributed to the review participants.

(d) An expedited consistency review or waiver of review is not subject to

(1) the public notice requirements under 6 AAC 50.500; and⁸⁰⁹

(2) elevation; ~~and~~⁸¹⁰ ~~(3) petition to the council.~~⁸¹¹ under 6 AAC 50.600.⁸¹² (Eff.

____/____/200__, Register ____)

Authority: AS 44.19.145

6 AAC 50.925 is repealed:

6 AAC 50.925. STATE RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION OR CERTIFICATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____) *[If a conclusive consistency determination in response to a federal consistency determination or certification under 16 U.S.C. 1456(c) has not been rendered within 10 days before the state response is due under federal requirements, DGC shall submit either the proposed consistency determination or a response that meets the requirements of 15 C.F.R. 930 to the appropriate federal agency as the state response. (Eff. 7/1/99, Register 150)]*

6 AAC 50.950 is amended to read:

6 AAC 50.950. COMPUTATION OF TIME. (a) A time period under this chapter must be calculated using calendar days. An action required to be taken on a Saturday, Sunday, or state or federal holiday must be taken by the close of business on or before the next working day.

(b) An action required to be taken by a deadline must be completed by the close of business on the workday identified as the deadline. (Eff. 7/1/99, Register 150; am ____/____/200__, Register ____)

Authority: AS 46.40.040

AS 46.40.096

AS 46.40.100

Editor's note: As of Register 150, July 1, 1999, the substance of 6 AAC 50.950 was previously contained in former 6 AAC 50.110(c).

6 AAC 50 is amended to read:

6 AAC 50.990. DEFINITIONS. (a) In this chapter, unless the context indicates otherwise

(1) "ACMP" means the Alaska Coastal Management Program [, AS SET OUT IN AS 46.40, THIS CHAPTER, 6 AAC 80, 6 AAC 85, AND THE ENFORCEABLE POLICIES OF APPROVED PROGRAMS OF DISTRICTS];

(2) "activity" means a land or water use ~~that may affect~~⁸¹³ , including the planning, construction or modification of works, facilities, or other structures, and includes the acquisition, use or disposal of⁸¹⁴ any coastal use or resource;

(3) "affected coastal resource district" has the meaning given in AS 46.40.096(g)(1);

(4) "alternative measure" means a requirement necessary to ensure the activity is consistent with the enforceable policies of the ACMP;

(5) [3]"applicant" means any natural person, corporation, company, partnership, firm, association, organization, business trust or society that submits an application for a resource agency or federal authorization or who submits an OCS plan for exploration, development and production [A PROJECT APPLICANT UNDER ACMP]; a federal agency applying for a permit or license from another state or federal agency is subject to the provisions of 6 AAC 50.305 - .395, and is not considered an applicant elsewhere;

(6) [4] "approved program" means a coastal resource district coastal management program [THAT HAS BEEN] approved by the council under AS 46.40 and filed by the lieutenant governor's office as provided under 6 AAC 85.180;

(7) "authorization" means

(A) any permit, license, authorization, certification, approval or other form of permission that a resource agency is empowered to issue to an applicant; and

(B) a federal permit or license and has the meaning given in 15 C.F.R. 930, as amended;

(8) "biological or physical resources" means resources in the coastal zone including plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, submerged aquatic vegetation, lands, gravel, sand, fresh waters, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, barrier islands, lagoons, exposed high energy coasts, and upland habitat;

(9) "close of business" means 5:00 p.m.;

(10) "coastal ~~uses~~⁸¹⁵ use⁸¹⁶ ~~or resources~~⁸¹⁷ resource⁸¹⁸" means any land or water use or natural resource of the coastal zone including subsistence, recreation, public access, fishing, historic or archaeological resources, geophysical resources, and biological or physical resources found in the coastal zone on a regular or cyclical basis;

(11) "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) within the boundaries established under 6 AAC 85.040, except for those lands excluded under 16 U.S.C. 1453(1);⁸¹⁹

~~(12)~~⁸²⁰ 12⁸²¹ "condition" means a requirement necessary to ensure an activity meets a resource agency's statutory or regulatory requirements and which may also ~~ensures~~⁸²² ensure⁸²³ consistency with the enforceable policies of the ACMP;

~~(12)~~⁸²⁴ 13⁸²⁵ "consistency certification" means a declaration that is supported by the necessary data and information by an applicant that a proposed project complies with the

enforceable policies of the⁸²⁶ ACMP and that the project will be conducted in a manner consistent with the program;

(~~13~~⁸²⁷ 14⁸²⁸) [(5) "CONCLUSIVE CONSISTENCY DETERMINATION" MEANS A FINAL CONSISTENCY DETERMINATION AS DESCRIBED IN AS 46.40.096 AND 6 AAC 50.120; (6)] "consistency determination" means [(A)] a document issued by a coordinating agency that indicates whether a proposed project is consistent or inconsistent with the ACMP [THAT (I) CONTAINS A BRIEF DESCRIPTION OF THE PROJECT UNDER REVIEW AND THE SCOPE OF THE PROJECT; (II) STATES WHETHER THE PROJECT IS CONSISTENT, CONSISTENT WITH STIPULATIONS, OR NOT CONSISTENT, AND PROVIDES A BRIEF STATEMENT OF THE REASONS FOR THAT DETERMINATION; (III) IDENTIFIES EACH CONDITION OR STIPULATION NECESSARY FOR THE PROJECT TO BE CONSISTENT AND THE STATE PERMIT TO WHICH THE CONDITION OR STIPULATION WILL BE ATTACHED; AND (IV) IDENTIFIES THE DEADLINE FOR SUBMITTING A REQUEST FOR ELEVATION UNDER 6 AAC 50.075(A) OR 6 AAC 50.075(D)(3), FOR SUBMITTING A NOTICE OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION, IF APPROPRIATE, AND FOR FILING A PETITION ON A PROPOSED CONSISTENCY DETERMINATION, IF APPROPRIATE; OR (B) THE STATE'S RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION OR CERTIFICATION SUBMITTED TO THE STATE UNDER 16 U.S.C. 1456(C) (COASTAL ZONE MANAGEMENT ACT) AND FEDERAL REGULATIONS ADOPTED UNDER THE AUTHORITY OF THIS STATUTE];

(~~14~~⁸²⁹ 15⁸³⁰) "consistency response" means

(A) the state's response to a federal consistency determination or applicant certification submitted to the state under 6 AAC 50.405-.495 and is a federal consistency determination or certification as identified in AS 44.19.145(a)(11); and

(B) a consistency determination under AS 46.40.096;

(~~15~~⁸³¹ 16⁸³²) [(7)] "consistency review" has the meaning given in AS 46.40.210;

[(8) "CONSISTENT" MEANS IN COMPLIANCE WITH THE STANDARDS ADOPTED BY THE COUNCIL AT 6 AAC 80.040 – 6 AAC 80.150 AND WITH THE ENFORCEABLE POLICIES OF AN APPROVED PROGRAM FOR AN AFFECTED COASTAL RESOURCE DISTRICT; (9)]

(~~16~~⁸³³ 17⁸³⁴) "coordinating agency"

(A) means the agency responsible for coordinating a consistency review and rendering a proposed or final [CONCLUSIVE] consistency determination as set out under AS 44.19.145 (a)(11) and AS 46.40.096; and

(B) has the same meaning as

(i) "reviewing entity," as used in AS 46.40.096; and

(ii) "office" or "state agency responsible for coordinating the consistency review," as used in AS 46.40.100(b);

(~~17~~⁸³⁵ 18⁸³⁶) [(10)] "council" means the Alaska Coastal Policy Council;

(~~18~~⁸³⁷ 19⁸³⁸) ~~"cumulative impacts" means, for the purposes of 6 AAC 50.710 and 6 AAC 50.730,~~⁸⁴⁰ reasonably foreseeable incremental⁸⁴¹ effects on a coastal use or resource which result from the incremental impact⁸⁴² of an individual project when viewed in connection⁸⁴³ together⁸⁴⁴ with the effects⁸⁴⁵ impacts⁸⁴⁶ of past projects⁸⁴⁷ and the effects of⁸⁴⁸ currently authorized projects;

(~~19~~⁸⁴⁹ 20⁸⁵⁰) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended;

~~(20)~~⁸⁵¹ 21⁸⁵²) [(11)] “DGC” means the division of governmental coordination within the office of management and budget in the Office of the Governor;

~~(21)~~⁸⁵³ 22⁸⁵⁴) “de minimis” has the meaning given in 15 C.F.R. ~~939~~⁸⁵⁵ 930.33⁸⁵⁶ (a)(3)(ii);

~~(22)~~⁸⁵⁷ 23⁸⁵⁸) “director-level proposed consistency determination” means a proposed consistency determination that reflects the participating directors or their delegates of the resource agencies' decision regarding the elevation;

~~(23)~~⁸⁵⁹ 24⁸⁶⁰) [(12)] “DNR” means the Department of Natural Resources;

~~(24)~~⁸⁶¹ 25⁸⁶²) [(13)] “disposal of interest in state land” means the sale, lease, or other disposition of state-owned or state-managed land or resources by DNR;

~~(25)~~⁸⁶³ 26⁸⁶⁴) [(14)] “district” has the meaning given "coastal resource district" in AS 46.40.210 ;

~~(26)~~⁸⁶⁵ 27⁸⁶⁶) “due deference” means that deference that is appropriate in the context of the commentor's expertise and area of responsibility, and all the evidence available to support any factual assertions;

~~(27)~~⁸⁶⁷ 28⁸⁶⁸) [(15)] “elevation” means a subsequent review under AS 46.40.096(d)(3) of a proposed consistency determination;

~~(28)~~⁸⁶⁹ 29⁸⁷⁰) [(16)] “enforceable policy” means a standard under 6 AAC 80, as amended, and a policy in an approved coastal resource district coastal management [PROVISION IN AN APPROVED] program that is legally binding, as developed under 6 AAC 85.090;

~~(29) [(17)] “fairly considered” means, for the purpose of a petition to the council on a proposed consistency determination or response, a proposed consistency determination or response by a coordinating agency that considers relevant factors in the consistency review and provides a reasoned determination or response that is responsive to timely submitted comments regarding consistency with an affected coastal resource district's approved program;~~⁸⁷¹

(30) “federal consistency determination” means a decision by a federal agency, supported with findings, that a proposed project will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP;

(31) “final consistency determination” has the same meaning as “conclusive state consistency determination” as used in AS 44.19.145(a)(11);

(32) “general permit” means an authorization ~~for a specific category of uses of a generic application filed by a resource agency on behalf of an entire category of potential users~~⁸⁷² that covers a group of similar facilities or activities subject to standard requirements⁸⁷³;

(33) “OCRM” means the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration of the Department of Commerce;

(34) [(18)] “OMB” means the office of management and budget in the Office of the Governor;

(35) [(19) “PERMIT” MEANS A PERMIT, LEASE, AUTHORIZATION, LICENSE OR ANY OTHER DETERMINATION NECESSARY FOR COMPLETION OF A PROJECT OR A DISCRETE PHASE OF A PROJECT; (20)] “petition on program implementation” means a petition filed under AS 46.40.100 (b)(2);

~~(36) [(21)] “petition on a proposed consistency determination” means a petition filed under AS 46.40.096(e);~~⁸⁷⁴

~~(37)~~⁸⁷⁵ 36⁸⁷⁶) [(22)] “project” means all activities that will be part of a proposed coastal development, that are subject to the consistency review requirements under this chapter [AN ACTIVITY OR USE THAT WILL BE LOCATED IN OR MAY AFFECT THE COASTAL ZONE OF THIS STATE AND THAT IS SUBJECT TO CONSISTENCY REVIEW UNDER 16

U.S.C. 1456(C), OR THAT REQUIRES THE ISSUANCE OF AT LEAST ONE STATE PERMIT; "PROJECT" INCLUDES EACH PHASE OF A PROJECT WHEN A LAND OR WATER ACTIVITY IS DEVELOPED OR AUTHORIZED IN DISCRETE PHASES, AND EACH PHASE REQUIRES A STATE AGENCY DECISION REGARDING PERMITS; (23)]

~~(38)~~⁸⁷⁷ 37⁸⁷⁸) "reasonably foreseeable" means using sound judgement to evaluate likely effects;

~~(39)~~⁸⁷⁹ 38⁸⁸⁰) "render" has the meaning given in AS 44.19.152;

~~(40)~~⁸⁸¹ 39⁸⁸²) [(24)] "resource agency" means the Alaska Departments [DEPARTMENT] of Environmental Conservation, [THE DEPARTMENT OF] Fish and Game, or [THE DEPARTMENT OF] Natural Resources;

~~(41)~~⁸⁸³ 40⁸⁸⁴) [(25)] "review participant" means

(A) a resource agency, a state agency that has requested participation, and an affected coastal resource district; and

(B) if a project includes an oil discharge prevention and contingency plan, "review participant" includes an affected regional citizens advisory council as defined in 33 U.S.C. 2732(d); ~~and~~⁸⁸⁵ ;⁸⁸⁶

~~(42) "staff to the council" means the staff within the DGC that advises the CPC.~~⁸⁸⁷

(b) For purposes of AS 46.40.096 (g)(1) and this chapter, "direct and significant impact" means an effect of a project that will likely contribute or lead to a significant change in or alteration of the natural, social, cultural, or economic characteristics ~~of a district~~⁸⁸⁸. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; am 5/20/93, Register 126; am 7/1/99, Register 150; am ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.010	AS 46.40.096
	AS 44.19.161	AS 46.40.040	AS 46.40.100

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